

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.**

In the Matter of)	
)	
Petition of Public Knowledge <i>et al.</i> for)	WT Docket No. 08-7
Declaratory Ruling Stating that Text)	
Messaging and Short Codes are)	
Title II Services or are Title I Services)	
Subject to Section 202)	
Nondiscrimination Rules)	

**COMMENTS OF
SPRINT NEXTEL CORPORATION**

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Executive Summary

Sprint Nextel Corporation (“Sprint Nextel”) makes the following points in these comments:

1. Petitioners fail to distinguish SMS and SCS services and fail to provide the Commission with necessary information to determine the regulatory status of these services. Sprint Nextel supplements the record and demonstrates that Short Message Services (“SMS”) and Short Code Services (“SCS”) are entirely different services. SMS is “store and forward” service that allows users to exchange short messages between mobile users and other applications utilizing an SMS gateway. SCS, on the other hand, is primarily a billing and collection service (provided to third parties) that enables easier access to SMS-based services.

2. SMS and SCS services are information services. SMS is strikingly similar to telemessaging service, which the Commission has determined to be an information service. Our comments describe in detail Sprint Nextel’s Text to Landline service to highlight its capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications. Furthermore, SCS is not a service provided to subscribers; instead, it is a business arrangement provided to third parties allowing for billing and collection.

3. SMS and SCS are not commercial mobile radio services. SMS and SCS are not “interconnected” services as they are not available to all other users of the public switched telephone network (“PSTN”). The *Wireless Broadband Order* also recognizes that a service cannot be both an information service and a CMRS service, and, as Sprint Nextel clearly demonstrates in its comments, SMS and SCS are information services.

4. Grant of the Petition would prevent wireless carriers from providing its customers with protection from unwanted or unsolicited spam and improper billing, as well as misleading, fraudulent and illegal content. While wireless carriers do not block or filter mobile-to-mobile text messages, wireless carriers do monitor the use of short codes to ensure a positive customer experience. The Commission should continue to allow these wireless carrier practices including enforcement of the Mobile Marketing Association (“MMA”) Guidelines, as they provide necessary consumer protections. Moreover, as a legal matter, carriers cannot be required to enter billing and collection arrangements with entities with which they do not choose to do business.

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**COMMENTS OF
SPRINT NEXTEL CORPORATION**

Sprint Nextel Corporation (“Sprint Nextel”) submits these comments opposing the subject petition (“Petition”), which seeks to fundamentally alter the regulatory treatment of Short Message Services (“SMS” or “text messaging”) and Short Code Services (“SCS”).¹

INTRODUCTION AND SUMMARY

Petitioners assert that SMS and SCS services are equivalent to traditional voice communications and that Commercial Mobile Radio Service (“CMRS”) providers must carry such messaging on their networks subject to Title II’s non-discrimination principles. Text messaging and short code services are not “telecommunications services” nor are they “commercial mobile services.” SMS and SCS squarely fit within the definition of information services. Accordingly, Title II and its non-discrimination principles are not applicable to such services.

¹ Petition for Declaratory Ruling, *In the Matter of the Petition of Public Knowledge et. al for Declaratory Ruling Stating Text Messaging and Short Codes are Title II Services or are Title I Services Subject to Section 202 Nondiscrimination Rules*, WT Docket 08-7 (filed Dec. 11, 2008)(“*Petition*”).

Grant of the *Petition* would undermine highly effective industry guidelines and carrier practices that are designed to and, in practice, do protect consumers from unwanted or unsolicited spam, unexpected charges, and potentially damaging programs, as well as misleading, fraudulent and illegal content. Moreover, as a legal matter, carriers cannot be required to enter billing and collection arrangements with entities with which they do not choose to do business.² The Commission should, therefore, reject the *Petition* on both legal and policy grounds and continue to allow carriers the ability to protect consumers.

I. UNDERSTANDING AND DISTINGUISHING SMS AND SCS

Petitioners provide an inadequate, three-paragraph “factual” “explanation” of SMS and SCS.³ In order to make a determination regarding the appropriate regulatory treatment of these services, Sprint Nextel believes this proceeding merits a more in-depth discussion. Further, Petitioners lump together text messaging and short code services as if they are same – they are not. Indeed, while the Petitioners seek a Commission declaration that both text messaging and short code services are Title II services, the *Petition* does not focus on text messaging. Instead, the *Petition* focuses entirely on short codes. In the end, both services are information services, but the Petitioners fail to distinguish these services and to provide the Commission with key information that reveals their true nature.

A. Short Message Service Explained

SMS, commonly referred to as “text messaging,” is a service that enables a mobile phone user to originate or receive short strings of data generally limited to 160

² Memorandum Opinion and Order, *In the Matter of Audio Communications, Inc.*, 8 FCC Rcd 8697 (November 24, 1993).

³ *Petition* at p. 2-3.

characters in length. They are most often exchanged between two mobile phone users, but they can also be exchanged between mobile phones and web-based applications, Voice over Internet Protocol (“VoIP”) applications, unified messaging systems, and instant messaging clients. In short, SMS is a robust “store and forward” messaging service similar in many respects to e-mail.

1. SMS Flow of Mobile-to-Mobile Text Messages

While SMS services vary, the most commonly used variety is the person-to-person text message exchanged between mobile telephone users who address each other using their mobile telephone numbers. Unlike a traditional phone call, the wireless carrier does not provide an open circuit between the text originator and text recipient. Texts are exchanged on a one-way basis (and not in real-time) first from the originator to the recipient. The recipient then replies to the text message in a separate one-way communication that can take place seconds, minutes, hours or days after receiving the initial text.

The SMS data packet is delivered to the wireless carrier’s Mobile Switch Center (“MSC”). On Sprint Nextel’s iDEN network, the transmission is carried over its IP network. On Sprint Nextel’s CDMA network, the transmission is carried on the overhead data channel of the voice network.⁴ The MSC in turn forwards the SMS packet to the wireless carrier’s Short Message Service Center (“SMSC”).⁵ The SMSC queries the Home Location Register (“HLR”) to determine the destination of the mobile device and attempts to forward the message to the destination MSC. If the recipient’s mobile telephone is available, the SMS will be delivered by the SMSC. If unavailable, the

⁴ The voice network has two channels; one is used for the voice communication; the other – the overhead data channel – can be used for a variety of purposes including SMS and call-processing functions.

message will remain stored in the SMSC.⁶ Depending on the logic employed by the carrier's SMSC, the SMSC may: (i) attempt to re-deliver the message periodically; (ii) wait for a message back from the destination MSC indicating that the destination mobile is available; or, (iii) it may employ "forward and forget logic" where the delivery is tried only once.

2. Importance of the SMSC

As described in the basic mobile-to-mobile text messaging flow above, the SMSC provides a "store and forward" function. The "store and forward" capabilities of Sprint Nextel's SMSCs have become more robust over time in order to meet customers' demand for SMS. This demand is evident in terms of the sheer volume of text messaging, the desire to use SMS in a variety of applications, and the desire for value-added SMS services. To keep up with this demand, Sprint Nextel has greatly increased the processing power, retrieval speed, and storage capacity of its SMSCs.

3. Evolution of SMS

SMS has evolved from a mobile-to-mobile text messaging service to a much more complex service offering. A text message may now be originated from computers via an SMS gateway. SMS gateways are web sites that allow users to send messages to mobile customers. For example, anyone with Internet access can go to Sprint Nextel's web site to send a text message to a Sprint Nextel customer by inputting the recipient's 10-digit telephone number. There are also text message services available on-line that allow people to send text messages to a mobile phone user.⁷ Text messages may also be originated from a variety of data applications including e-mail, VoIP applications, unified

⁶ Generally, a device is "available" if the device is powered-on and has digital cell coverage.

⁷ See e.g., <http://smseverywhere.com/send.htm>

messaging systems, and instant messaging clients. Again, these text messages are sent via SMS gateways. As discussed below, text messages can also be sent to landline telephone customers.

Similar to e-mail, text messages may be stored and retrieved later. Text messages can be stored and viewed on a mobile handset or on a carrier's web site; and, in the case of an e-mail-to-text (or vice versa), the text message can be retrieved from the user's e-mail account.

4. Premium SMS

SMS has also evolved to become the protocol-of-choice for delivering content and applications to mobile telephone users. There is a litany of such premium SMS services – some of the more common examples include ring tones, wall paper, and message alerts. Here again, Sprint Nextel's SMSC plays a critical role in managing the data exchange between the Sprint Nextel customer and the content provider.

In a typical premium SMS flow, the mobile telephone user submits a text to the content provider (often addressing the text to a short code established by the content provider, *see* Section I. B. below). Once the text message is received at the wireless carrier's SMSC, it is identified as a premium message (by a table look-up) and delivered to the content provider typically using TCP/IP protocols such as Short Message Peer-to-Peer Protocol ("SMPP") or the External Machine Interface ("EMI"). On the reverse link (from the content provider to the mobile telephone user), the content provider submits the SMS to the wireless carrier's SMSC – again using a TCP/IP protocol. The SMSC then searches the HLR for the mobile handset and delivers the SMS content.

Aside from the fact that premium SMS messages cost more to the end user, the other notable distinction between SMS and premium SMS is that the wireless carrier provides billing and collection on behalf of the third party content provider.

B. Short Code Services Explained

1. Background

Short codes are three- to nine-digit numeric codes used to address SMS messages to a recipient. They were developed, primarily for the benefit of marketers and advertisers, to expedite the delivery of wireless SMS-based content. A mobile customer sends a text message to these short five or six digit codes instead of a longer string of numbers. The shorter numbers are easier to remember and easier to enter into the mobile phone. In this way, short codes are similar to typing “sprint.com” into an Internet browser instead of typing “http://www.sprint.com.”

Short codes are simply a way for companies to directly interact and attract a market segment – mobile telephone users. Short codes are advertised to consumers in print ads, radio, television, on-line, at events, and in a variety of other media. Short codes are used to for tele-voting (*e.g.*, American Idol), sweepstakes, polling, mobile coupons, and other promotions. In addition, short codes are used to sell or provide a variety of wireless content and premium SMS such as games, ring tones, screen savers, *etc.* Again, short codes are similar in many respects to a web site in that both are created to drive an audience to a common point of interaction with a company or organization. And both short codes and web sites are passive in that they require an interested person to actively engage them (*e.g.*, a person must type in sprint.com into a web browser to view Sprint Nextel’s web site, or text “12345” to obtain a ring tone).

2. Short Codes are Used to Bill End Users

From a wireless carrier perspective, a short code is used to bill subscribers on behalf of third party content providers. Charges for premium SMS appear on the monthly invoices that Sprint Nextel sends to its customers. Sprint Nextel receives calls from its customers with questions, concerns and complaints regarding these premium SMS charges. Because of this interdependent relationship, Sprint Nextel must have the ability to determine with whom it will allow access to its billing system.

3. Provisioning a Short Code

In order for short codes to work, wireless carriers must provision them on their networks. Basically, Sprint Nextel loads these codes into its network. When a text is received, the appropriate network element will perform a table look-up and route the text to the appropriate assignee of the short code (delivered to the short code assignee using TCP/IP protocols such as SMPP or EMI). And, as discussed, the short code is used to bill the end user on behalf of the party to whom the short code was sent. Short codes thus introduce another level of sophistication for the SMSC's "store and forward" functionality.

4. Common Short Codes

While wireless carriers may provision short codes exclusively for one assignee (*e.g.*, Sprint Nextel provisioned an exclusive short code for the National Football League – text "NFL" to 7777), the vast majority of short codes are "common short codes" ("CSC"s). Common short codes in the United States are administered by the Common Short Code Administration ("CSCA") under the auspices of the Cellular Telecommunications & Internet Association ("CTIA"). The CSCA in turn relies upon

NeuStar to manage the CSC database of numbers. According to a “CSC primer” prepared by the Mobile Marketing Association:

CSCs are provided and managed by an ecosystem of companies, including the Common Short Code Administration (CSCA), participating wireless carriers, Mobile Application Service Providers (MASP) and Aggregators. Any company can use a CSC, but it must be obtained from this ecosystem through a series of steps, which include applying for a CSC and submitting the CSC-based campaign to wireless carriers for review and testing.⁸

In order to obtain a CSC, therefore, a company must submit an application to the CSCA outlining the advertising/marketing campaign. The company may lease either a vanity CSC or a randomly assigned CSC (vanity CSCs cost more to lease).

The overarching goal of CSCs is to provide a common SMS experience for all wireless customers regardless of which carrier provides the customer service. In other words, a Sprint Nextel customer texting the CSC “12345” will be directed to the same destination as a T-Mobile customer texting CSC “12345.” The “commonality” of a CSC, however, is wholly dependent on the number of participating wireless carriers (*i.e.*, the number of wireless carriers that load the CSC into their respective SMSCs). Ultimately, each wireless carrier chooses whether or not to provision a CSC on its network.

* * *

In sum, SMS and SCS are entirely different services. SMS is a protocol used to transmit short, data messages and digital content to and from mobile subscribers. In contrast, SCS are three- to nine-digit numeric addresses that allow mobile subscribers easier access to a host of SMS-based services and are a business arrangement to allow for the billing and collection for those services. They are clearly not one-in-the-same as

⁸ <http://www.mmaglobal.com/shortcodeprimer.pdf>

Petitioners lead the Commission to believe. And, as discussed, in Sections II and III below, the characteristics of these services, as describe above, are “information services” to which Title II does not apply.

II. SMS AND SCS ARE INFORMATION SERVICES

SMS and SCS bear all the defining characteristics of information services and should be classified as such.

A. Information Services Defined

Building on earlier precedent dating back to the *Computer II Decision*,⁹ Congress in the 1996 Telecom Act established complementary, mutually-exclusive definitions of “telecommunications service” and “information service.”¹⁰ Generally speaking, a telecommunications service is a regulated service subject to Title II’s nondiscrimination principles. In contrast, Congress sought to free information services from Title II regulation. Congress established the following definition:

The term "information service" means the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications, and includes electronic publishing, but does not include any use of any such capability for the management, control, or operation of a telecommunications system or the management of a telecommunications service.¹¹

As seen in the definition of information service, a provider of information service may use telecommunications to deliver the information service. Indeed, the Commission recognizes that “information services require the use of telecommunications to connect

⁹ See *Amendment of Section 64.702 of the Commission’s Rules & Regulations, Second Computer Inquiry*, Final Decision, 77 F.C.C.2d 384 (1980) (Computer II Decision”).

¹⁰ Federal-State Joint Board on Universal Service, *Report*, 13 F.C.C. Rec. 11,501, 11,507-11,508 ¶ 13 (1998).

¹¹ 47 U.S.C. § 153(20).

customers to the computers or other processors that are capable of generating, storing, or manipulating information.”¹²

B. SMS is a Modern-Day Telemessaging Service which the Commission Has Previously Determined to be an Information Service

While the Commission has not directly ruled on whether SMS is an information service, it has determined that a very similar service is an information service. In 2001, the Commission affirmed a tentative conclusion that telemessaging is an information service.¹³ Telemessaging is defined as “voice mail, voice storage and retrieval services, [and] any live operator services used to record, transcribe or relay messages.”¹⁴ In reaching its conclusion that telemessaging is an information service, the Commission determined that the recording, transcribing and relaying functions performed by the live operators “plainly provide ‘the capability for ... storing ... or making available information via telecommunications.’”¹⁵

Wireless carriers “store and forward” SMSCs are essentially modern-day, automated “live operators.” Like telemessaging live operators, Sprint Nextel’s SMSCs record text messages, transcribe them (through protocol conversion), and relay them to the recipient. The fact that these functions are performed on an automated basis by an SMSC or computer should not deter the Commission. Indeed, the fact that a computer is used lends further support to the fact that SMS is a data-centric service provided via telecommunications. Notably, in the early days of SMS text messaging, the service was often referred to as “teletexting” obviously borrowing its vernacular from the better

¹² See *Implementation of the Non-Accounting Safeguards of Section 271 and 272 of the Communications Act of 1934, as amended*, Order on Remand, 16 FCC Rcd 9751, 9770 ¶ 36 (2001) (“*Non-Accounting Safeguards Remand*”).

¹³ *Id.* at ¶ 45

¹⁴ 47 U.S.C. § 260(c).

¹⁵ *Non-Accounting Safeguards Remand* at ¶ 45.

known (at the time) and strikingly similar “telemessaging” service. The Commission should, therefore, rely upon its earlier precedent regarding telemessaging and declare SMS to be an information service.

C. Text to Landline Service is a Prime Example of SMS as an Information Service

Sprint Nextel’s recently launched Text to Landline SMS exemplifies all the defining characteristics of an information service. With Text to Landline service, a Sprint Nextel mobile customer sends a text message to a landline telephone number. The landline customer receives a telephone call. A computer-generated voice from Sprint Nextel’s SMSC informs the customer that she is receiving a text to landline message from a Sprint Nextel customer. The mobile phone number of the caller is announced and the text message is converted from text-to-speech. The landline recipient may respond to the text to landline message by either leaving a voice message or responding with pre-selected text responses, such as “yes,” “no,” “thank you,” “where are you,” *etc.* The Sprint Nextel mobile customer then receives a text message response either containing one of the pre-selected text responses or a telephone number to call in order to retrieve the voice message from the landline customer.

This Text to Landline SMS service demands a sophisticated SMCS to manage the messaging between a mobile device and a landline telephone. The SMCS *stores* the message, *generates* a call to the landline telephone, *transforms* the text to speech, *acquires and stores* either a text message or a voice message (depending on how the landline recipient chooses to respond), *processes* the response from the landline recipient, and *generates* a text message back to the originator. The italicized functions performed by the SMSC to provide the Text to Landline SMS plainly provide “the capability for

generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications.”¹⁶ In short, this Sprint Nextel SMS – and SMS generally – bears all the hallmarks of an information service.

D. Short Code Service is an Information Service

As described in Section I. B., short codes are three- to nine-digit numeric codes used to direct or address SMS-based messages combined with a billing and collection service. Once the short code is loaded into a wireless carrier’s network, subscribers will be able to address text messages to the third- party assignee of the short code. From Sprint Nextel’s perspective, the short code “service” is a provisioning and billing service provided to the assignee of the short code.

A short code, therefore, is not a service provided to a wireless end user. The service Sprint Nextel provides to its end users is the underlying SMS needed to contact a third party via the short code. To an end user, therefore, the short code is very similar to an e-mail or web site address. Thus, the short code service is a business arrangement between Sprint Nextel and third-party content providers that allows for billing for various services provided by a third party.

III. SMS AND SCS ARE NOT COMMERCIAL MOBILE RADIO SERVICES

Petitioners wrongly assert that SMS/SCS is an interconnected commercial mobile radio service subject to all common carrier obligations including Section 202 nondiscrimination rules.¹⁷ Based on its statutory definition, a commercial radio service must be interconnected to the public switched telephone network (“PSTN”).¹⁸ SMS messages are not, however, carried on the PSTN. Instead, SMS messages are data

¹⁶ *Non-Accounting Safeguards Remand* at ¶ 45.

¹⁷ *Petition* at p. 7.

¹⁸ 47 U.S.C. §332(d).

packets routed to an IP-address associated with the subscriber's 10-digit phone number. Commission rules further define an interconnected service as that which "gives subscribers the capability to communicate to or receive communications from *all other users on the public switched network.*"¹⁹ While SMS are widely available to wireless users connected to the PSTN, not all wireless customers have access to SMS and wireline subscribers are incapable of sending or receiving an SMS.²⁰ Hence, SMS is not a ubiquitously interconnected service; indeed, SMS is unavailable to 167.5 million landline subscribers interconnected to the PSTN.²¹

Petitioners rely heavily on the Commission's recent *Roaming Order* in support of their assertion that SMS is a commercial mobile service.²² The Commission extended automatic roaming obligations to push-to-talk and SMS noting that these services are "interconnected features or services in some instances, but non-interconnected in others, depending on technology and network configuration chosen by the carriers."²³ While Sprint Nextel believes the Commission erred in extending roaming obligations to push-to-talk and SMS, the Commission inserted an important footnote stating "[w]e note that nothing in this order should be construed as addressing regulatory classifications of push-to-talk, SMS or other data features/services."²⁴ In short, the Commission correctly

¹⁹ 47 C.F.R. § 20.3.

²⁰ Sprint Nextel's Text to Landline service, discussed in Section II.C., allows the mobile user to send a text to a landline user, but the landline user does not actually receive a text message. Instead, the landline user receives a recorded voice message.

²¹ See United States Telecom Association, Telecom Statistics at: <http://usta.org/Learn/TelecomStatistics.html>

²² Petition at p. 8.

²³ *In the Matter of Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers, Report and Order and Further Notice of Proposed Rulemaking*, WT Docket 05-265, 22 F.C.C. Rcd 15817 (2007) ("Roaming Order").

²⁴ *Id.* at n. 134.

cautioned Petitioners not to read the decision to change the regulatory status of these services.

Finally, the *Wireless Broadband Order* recognizes that a service, like SMS, cannot be both an information service and a CMRS service.²⁵ Sprint Nextel has demonstrated clearly that SMS is an information service. Thus, even if the Commission determined that SMS is an interconnected service, it cannot be both at the same time.

* * *

In sum, SMS does not meet either the statutory or regulatory definition of a commercial radio service. SMS messages are not carried across the PSTN. And SMS is not an “interconnected service” because it is not available to all other user’s of the PSTN. As a result, the Commission must not subject SMS to Title II common carrier regulations including Section 202 nondiscrimination rules.

IV. GRANT OF THE PETITION WILL RESULT IN THE LOSS OF CONSUMER PROTECTIONS

Petitioners believe that wireless carriers should be precluded from exercising judgment in the provision of certain short codes because such judgment “restricts free speech, is anti-competitive, stifles innovation, and even affects public health.”²⁶ Short codes, however, are not an expression of free speech. They are business arrangements. Customers cannot require carriers to go into business with any entity that the customer chooses. As the Commission has said in the context of 900 service, “the First Amendment only prohibits governmental actions that abridge speech. This prohibition

²⁵ *In the Matter of Appropriate Regulatory Treatment for Broadband Access to the Internet over Wireless Networks*, Declaratory Ruling, WT Docket No. 07-53 (2007)(“*Wireless Broadband Order*”).

²⁶ *Petition* at p. ii.

does not directly apply to business decisions by private entities.”²⁷ Thus, Sprint Nextel is not required to sell pornography, for example, to its customers. Petitioners also fail to realize that wireless carriers play a crucial in protecting consumers from unwanted or unsolicited spam, unexpected charges, and potentially damaging programs, as well as misleading, fraudulent and illegal content. Grant of their *Petition* will erode these protections and harm American consumers.

A. Mobile Marketing Association Guidelines

When text messaging and the use of short codes exploded, wireless carriers and marketers quickly recognized that SMS-based marketing, advertising and promotion would enjoy long-term success only if it provided a positive customer experience. In the early “wild west” days, there were many bad actors and questionable campaigns resulting in a poor customer satisfaction. This caused tremendous friction between wireless carriers, their customers, ad agencies, retailers, aggregators, content providers, and regulatory agencies. To gain control of these issues, a consortium of these parties founded the Mobile Marketing Association (“MMA”).

The MMA has since published two documents: the MMA Code of Conduct and the MMA Best Practices.²⁸ Together these documents regulate an “ecosystem of companies” involved with mobile marketing. The basic tenets contained within these documents are customer notice, opt-in consent, and the protection of privacy. Sprint Nextel is a member of the MMA and strongly supports the MMA Code of Conduct and

²⁷ Memorandum Opinion and Order, *In the Matter of Audio Communications, Inc.*, 8 FCC Rcd 8697 (November 24, 1993), ¶ 30.

²⁸ Both documents are available to the public at no cost: <http://mmaglobal.com/>

MMA Guidelines. These are living, breathing documents that MMA members review and update periodically.

B. Wireless Carriers Monitor Short Codes and De-Provision as Necessary to Protect Consumers

Wireless carriers share in the responsibility of monitoring the use of common short codes. Wireless carriers are, however, uniquely situated to do so because they bill the mobile end user and receive customer care calls if something goes awry. Sprint Nextel is often forced to de-provision common short codes that do not follow the MMA guidelines. Sprint Nextel has shut down campaigns, including but not limited to, campaigns that: (i) deceptively list one price for content but charge a much higher price; (ii) have a pre-checked opt-in box; (iii) result in spawn (forcing customer into an endless string of affiliate offers); and (iv) fail to provide double opt-in for premium SMS.

C. Sprint Nextel Does Not Block Mobile-Originated and Mobile-Terminated SMS

While Sprint Nextel believes it should be permitted to monitor and control short code and premium SMS campaigns, Sprint Nextel does not monitor, block or filter text messages exchanged between two mobile customers (*i.e.*, person-to-person or mobile-originated-to-mobile-terminated) *unless*, the customer requests such blocking or filtering. In addition, in order to protect its customers from unwanted text messages (customers often incur a charge for incoming texts) and to protect its network, Sprint Nextel also employs a filter in its SMSC to weed out spam and suspicious, often-times high-volume Internet-originated SMS. These filtering/blocking practices provide an important consumer protection that could be removed if the *Petition* is granted.

Finally, Sprint Nextel disagrees vehemently with Petitioners assertion that wireless carriers must provision a short code to a competitor. As described above, a short

code or common short code is primarily and advertising tool. Wireless carriers are entitled to deny their competitors advertising.

CONCLUSION

For the foregoing reasons, Sprint Nextel urges the Commission to deny the Petition for Declaratory Ruling. If the Commission takes any action as a result of the *Petition*, it should declare that SMS and SCS are information services, are not commercial mobile radio services, and are not subject to the non-discrimination provision in Section 202.

Respectfully submitted,

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