

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

<b>In the Matter of</b>	)	
	)	
<b>Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991</b>	)	
	)	
<b>December 29 2008 Letter from Paul D.S. Edwards Seeking Expedited Clarification and Declaratory Ruling</b>	)	<b>CG Docket No. 02-278</b>
	)	
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**REPLY COMMENTS OF SPRINT NEXTEL CORPORATION**

Sprint Nextel Corporation (“Sprint”), pursuant to the Commission’s *Public Notice*, DA 09-542 released March 3, 2009, hereby respectfully submits its reply to the comments received on the request of Paul D.S. Edwards for expedited clarification and declaratory ruling filed in the above-captioned proceeding (“Edwards Request”).<sup>1</sup> Mr. Edwards has asked the FCC to declare that a creditor may not “place autodialed or prerecorded message calls to a telephone number associated with wireless service that was provided to the creditor initially as a telephone associated with landline service.” *Public Notice* at 1. Nearly all of the commenting parties urge the Commission to reject Mr. Edwards’s request. Sprint agrees. Mr. Edwards’s request is totally without merit.

In a *Declaratory Ruling* released January 8, 2008 in this proceeding,<sup>2</sup> the Commission found that “autodialed and prerecorded message calls to wireless numbers ... are permissible when such wireless numbers are “provided by the called party in connection with an existing

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<sup>1</sup> Mr. Edwards’s request was contained in a letter dated December 29, 2008 to Ms. Marlene H. Dortch, Secretary FCC but apparently not filed until January 12, 2009.

<sup>2</sup> *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991; Request of ACA International for Clarification and Declaratory Ruling*, 23 FCC Rcd 559 (2008) (*ACA Declaratory Ruling*)

debt,” because such calls are made with the ‘prior express consent’ of the called party.” 23 FCC Rcd at 564 ¶ 9. As the Commission explained, the “provision of a cell phone number to a creditor, *e.g.*, as part of a credit application, reasonably evidences prior express consent by the cell phone subscriber to be contacted at that number regarding the debt.” *Id.*

Similarly, the provision of a landline number to a creditor in the course of a credit transaction – and a “can be reached” (“CBR”) number is usually required to obtain credit – “evidences prior express consent” by the [residential wireline] subscriber to be contacted at that number regarding the debt.” Mr Edwards alleges that such express consent is revoked automatically and without notice to the creditor when the wireline subscriber ports his number to a wireless phone, thereby depriving the creditor of the ability to place autodialed or prerecorded message calls to the CBR number now associated with a wireless device. Thus, or so Mr. Edwards would have the Commission rule, the creditor would again have to obtain the consumer’s consent in order to place autodialed or prerecorded message calls to the CBR number previously provided by the consumer. The difficulty with Mr. Edwards’s position is that “[a] consumer’s decision to provide a number to a creditor constitutes consent to call that number without regard to the character of the service associated with that number” and a subsequent decision by the consumer “to port that residential number to a wireless carrier does not destroy or limit the expression of consent to be called on that line.” American Bankers Association (“ABA”) Comments at 2. Indeed, “[t]he critical issue is whether the consumer consented to be contacted at a particular number” and not the “particular telecommunications service employed by the consumer.” Direct Marketing Association Comments at 2. *See also*, Soundbite Communications at 2 (“When a consumer gives a telephone number, it evidences the consumer’s permission to be called at that number” and such “permission to call that number is not affected

by whether the number is associated with landline or wireless service.”); FMA Alliance Comments at 1 (same); United Services Automobile Association at 2 (same).

Moreover, as the United States Telecom Association (“USTelecom”) explains, “a customer that ‘cuts the cord’ would likely expect the equivalent service – and to continue to receive the same calls as before – just on a different network.” USTelecom Comments at 4. Thus “a customer’s decision to port her number intermodally, by itself, does nothing to alter the customer’s prior express consent to the creditor’s contacting the customer at that same number” especially when, as is likely to be the case, the consumer does not inform the creditor that she has ported her landline number to a wireless carrier. If the customer “no longer wishes to be contacted at the number provided to the creditor, the customer, at any time, can direct the creditor not to use that number.” *Id.* See also ABA Comments at 4 (“By taking the extra steps needed to port the number, the consumer is affirmatively demonstrating the desire that those calls come to the established residential number via a wireless carrier” thereby “manifest[ing] express consent to continue the permissions that already existed for callers to contact the individual using the old number delivered over the new service.”); Comments of SoundBite at 4 (“A consumer who does wish to receive calls from a creditor on a number he or she has ported to a wireless service can simply contact the creditor to so declare” which in turn would enable the creditor “to inquire of the consumer at what alternative contact number he or she would prefer to receive calls.”).

The comments of the parties identified above are consistent with the views expressed by nearly all of the other comments received by the Commission, and clearly demonstrate why the FCC must deny Mr. Edwards’s request on the merits. Sprint believes that there is also another reason why the Commission should summarily reject the request. Mr. Edwards concedes that he

is seeking the declaratory ruling to counter arguments made by defendants in two lawsuits now before courts in Nevada. Edwards Request at 2. Indeed, it appears, based on his letter, that the ruling Mr. Edwards seeks is the pivotal issue in these two cases and thus would effectively determine the outcome.

Mr. Edwards does not provide the Commission with any of the case details such as the names of the plaintiff and defendants; whether the cases are being heard in federal district court or in a state court; or the status of such cases. Nonetheless, it can reasonably be assumed that Mr. Edwards is either the plaintiff or deeply involved in these cases. A Google search reveals that Mr. Edwards has filed a number of lawsuits in Nevada courts alleging violations by various companies of the Telephone Consumer Protection Act of 1991 (“TCPA”).

Thus, his request is likely barred by Section 207 of the Act, 47 U.S.C. § 207. That provision requires that a person who claims to have been damaged by the common carrier make a choice as to whether he wishes the Commission or a U.S. court of competent jurisdiction to adjudicate his claim.<sup>3</sup> And once he elects his forum in this regard, he cannot then ask the other forum to decide the case in a complaint proceeding or as is the case here under the guise of a declaratory ruling. If the judges hearing the lawsuits believe that an interpretation/clarification on the scope of the FCC’s decision in *ACA Declaratory Ruling* is necessary to decide the issues in those cases – and as these comments make clear, no such interpretation or clarification is

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<sup>3</sup> Section 207 provides that

[a]ny person claiming to be damaged by any common carrier subject to the provisions of this chapter may either make complaint to the Commission as hereinafter provided for, or may bring suit for the recovery of the damages for which such common carrier may be liable under the provisions of this chapter, in any district court of the United States of competent jurisdiction; but such person shall not have the right to pursue both such remedies.

necessary – they can seek an interpretation/clarification from the Commission with a primary jurisdiction referral.

For the reasons set forth above and in virtually all of the comments filed in response to the FCC's *Public Notice*, Sprint respectfully requests that the Commission reject the Mr. Edwards's request.

Respectfully submitted,

SPRINT NEXTEL CORPORATION

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