

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

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In the Matter of	)	
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Rules and Regulations Implementing the	)	CG Docket No. 02-278
Telephone Consumer Protection Act of 1991	)	
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**REPLY COMMENTS OF METROPCS COMMUNICATIONS, INC.**

MetroPCS Communications, Inc. (“MetroPCS”),<sup>1</sup> by its attorneys, hereby respectfully submits its reply to comments on the Notice of Proposed Rulemaking in the above captioned proceeding.<sup>2</sup> The following is respectfully shown:

**I. INTRODUCTION**

MetroPCS concurs with the comments of Sprint Nextel Corporation (“Sprint”) that the Commission’s current rules do not, and its proposed rules should not, restrict communications between wireless service providers and their customers for which the customers are not charged and which contain information related to the customers’ services.<sup>3</sup> MetroPCS concurs that the Commission should protect consumers from unwanted telemarketing calls and supports the

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<sup>1</sup> For purposes of these Comments, the term “MetroPCS” refers to MetroPCS Communications, Inc. and all of its FCC-licensed subsidiaries.

<sup>2</sup> *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, NOTICE OF PROPOSED RULEMAKING, in GC Docket No. 02-278, FCC 10-18 (March 22, 2010) (“*2010 NPRM*”).

<sup>3</sup> See Comments of Sprint Nextel Corporation at 3, in CG Docket No. 02-278, filed May 21, 2010 (the “Sprint Comments”).

Commission's attempts to harmonize its rules with those of the Federal Trade Commission, but also believes that the Commission should do nothing to disturb the long-standing approach to calls by wireless carriers to their customers for which no charge applies.

In its implementation of the Telephone Consumer Protection Act ("TCPA")<sup>4</sup>, the Commission proposes requiring that "any telephone call" to wireless telephones be made only with the "prior express written consent of the called party" if those calls are made with the aid of an automatic telephone dialing system or an artificial or prerecorded voice.<sup>5</sup> Absent clarification, this mandate might be misinterpreted to hinder the effective and beneficial communication between wireless service providers and their own subscribers. Since wireless carriers use calls and messages to their customers to communicate important information regarding their service, such an interpretation could have profound negative consequences to the wireless industry. Thus, MetroPCS shares Sprint's well-expressed concern that this proposed rule change should not be "viewed to overturn certain Commission precedent permitting, without requiring additional consent, autodialed or prerecorded account-related calls to wireless customers that are essential to Sprint's [and MetroPCS'] business and that wireless customers have come to expect."<sup>6</sup> A contrary interpretation or an overly broad implementation of new rules is unnecessary and would harm the public interest by leaving consumers without timely information, stifle competition in the wireless services market, and result in higher prices for many Americans.

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<sup>4</sup> 47 U.S.C. § 227.

<sup>5</sup> 2010 NPRM at ¶ 20.

<sup>6</sup> Sprint Comments at 3.

## **II. ROUTINE ACCOUNT-RELATED COMMUNICATIONS BETWEEN WIRELESS SERVICE PROVIDERS AND CUSTOMERS ARE ESSENTIAL AND BENEFICIAL**

MetroPCS targets a wireless market segment that historically has been underserved by the large national wireless carriers, and offers its customers a compelling value proposition, by providing fixed-price, tax and regulatory fee inclusive, unlimited service plans for a low flat affordable monthly fee. One cost-saving measure MetroPCS employs is that it does not send customers paper bills, unless the customer specifically requests one. Rather, each month, MetroPCS customers receive on their handsets an electronic notice of the payment required to continue service into the next month.<sup>7</sup> Customers also receive periodic electronic messages on their handsets regarding their account status (e.g., confirmation of requested changes to account). MetroPCS does not believe that the manner in which it delivers its monthly billing, periodic account status notifications, or other messages constitutes the use of an “automated telephone dialer system” falling under the purview of the TCPA.<sup>8</sup> Nonetheless, MetroPCS believes the Commission should affirmatively confirm that such communications do not fall within the purview of the TCPA in the proposed rules, and supports Sprint’s request that the Commission “clarify that carriers such as Sprint [and MetroPCS] are not required to obtain separate, explicit written consent to place autodialed and/or prerecorded calls without charge to their wireless customers to provide account-related information...”<sup>9</sup>

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<sup>7</sup> In fact, MetroPCS customers will receive not only the initial message with the amount due, but also may receive reminder messages since if the customer fails to make payment by the due date her service will be suspended. A significant number of MetroPCS customers do not make payment upon receipt of the first notice so the reminder messages help to ensure that service continues by reminding the customer of the need to pay the bill.

<sup>8</sup> MetroPCS does use certain automated processes to expedite and reduce the cost of its billing and notification procedures, but all messages are directed to known customer telephone numbers, not to randomly generated or sequential number blocks.

<sup>9</sup> Sprint Comments at 1.

This clarification will be particularly helpful to prepaid service providers such as MetroPCS. Because MetroPCS and certain other prepaid carriers do not require customers to enter into long term service contracts, the paperwork associated with establishing a new account is simplified. As a consequence, requiring MetroPCS to secure advance written consent from each customer indicating that he or she wants to receive automated SMS billing notices is not practical. Moreover, since MetroPCS does not require signed agreements, this requirement would impose a burden on MetroPCS without any corresponding public interest benefit. However, this does not mean that the customer wants to forgo such messages. Our customers receive great benefit from our billing system, which saves money by cutting costs, and these savings are passed along to our subscribers. Contrary to a monthly paper-billed service, they also receive timely and up-to-date information regarding the status of their account.

As Sprint points out, since 1992 wireless service providers have relied on the statements of the Commission that “[b]ased on the plain language of §227(b)(1)(iii), we conclude that the TCPA did not intend to prohibit autodialed or prerecorded message calls to cellular customers for which the called party is not charged. Moreover, neither the TCPA nor the legislative history indicates that Congress intended to impede communications between radio common carriers and their customers regarding the delivery of customer services by barring calls to cellular subscribers for which the subscriber is not charged.”<sup>10</sup> Furthermore, in its 2002 *Notice of Proposed Rulemaking and Order* regarding the TCPA, the Commission again found that “calls made by cellular carriers to their subscribers for which the subscribers were not charged do not

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<sup>10</sup> *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, REPORT AND ORDER, at ¶ 45, in CC Docket No. 92-90 (Oct. 16, 1992) (“1992 Order”).

fall within the prohibitions on autodialers or prerecorded messages.”<sup>11</sup> Further, since wireless carriers are in the business of providing telecommunication services it would indeed be a perverse requirement that a carrier could not use its own service to communicate with its customers without this consent.

If the Commission fails to confirm its previous view that communications between wireless service providers and their customers are not subject to the TCPA, it runs the risk of stemming the beneficial pro-competitive growth in the prepaid wireless market. In the *Fourteenth Mobile Wireless Competition Report*, the Commission acknowledged the potential of prepaid wireless carriers on the overall market, noting that prepaid and wholesale subscribers composed 21.5 percent of all wireless subscribers in mid-2009.<sup>12</sup> Recent press reports also have noted the vibrancy of the prepaid sector of the wireless market.<sup>13</sup> These trends clearly indicate that prepaid services are meeting a substantial unsatisfied consumer demand. No doubt this is occurring, in part, because, as noted by the Commission, “[p]repaid service providers have been

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<sup>11</sup> *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, NOTICE OF PROPOSED RULEMAKING AND MEMORANDUM OPINION AND ORDER, at ¶ 45, in CG Docket No. 02-278 (Sept. 18, 2002).

<sup>12</sup> *Annual Report and Analysis of Competitive Market Conditions With Respect to Mobile Wireless, Including Commercial Mobile Services*, FOURTEENTH REPORT, at ¶ 155, in WT Docket No. 09-66 (May 20, 2010). (“*Fourteenth Mobile Wireless Competition Report*”)

<sup>13</sup> See, e.g., *US Wireless 411*, UBS Securities LLC, March 12, 2010 (on file with Paul, Hastings, Janofsky & Walker) (finding that “[p]repaid represented almost half of the industry’s net adds in 4Q (unlimited making up 23%), driven by promotional pricing at MetroPCS, Leap, and StraightTalk. As a result, prepaid subscriber growth accelerated 30 bps sequentially to 17.1%. Prepaid subscribers now make up 19% of the US wireless base, up from 17% a year ago.”); *Prepaid strong while postpaid stalls in 1Q*, UBS Securities LLC, April 13, 2010 (noting that MetroPCS had more net prepaid adds, with 317,000, than AT&T, with -36,000, and Verizon Wireless, with 67,000); Phil Goldstein, “Leap: Mobile broadband driving growth,” *Fierce Wireless*, Dec. 11, 2009, available at [http://www.fiercewireless.com/story/leap-mobile-broadband-driving-growth/2009-12-11?utm\\_medium=nl&utm\\_source=internal](http://www.fiercewireless.com/story/leap-mobile-broadband-driving-growth/2009-12-11?utm_medium=nl&utm_source=internal) (noting that Leap “notched 116,000 net customer additions in the third quarter, a figure that included 97,000 net broadband subscriber additions” and AT&T and Verizon have introduced similar prepaid data plans).

the most aggressive in cutting the prices of unlimited service offerings,”<sup>14</sup> which is a particular benefit to consumers during times of economic recession.<sup>15</sup> Another reason for the popularity of prepaid service is the simplicity of the service and the flexibility offered by the absence of long term contracts and associated early termination fees.

Forcing prepaid wireless subscribers to obtain advance written consent in order to receive periodic communications from their wireless service providers, such as notice of the payment due date for the coming month’s services, especially in light of the fact that such services generally do not require any form of signed contract could ring a death knell for efficient communication between prepaid wireless carriers and American consumers; the means by which prepaid wireless providers and consumers establish a working relationship often does not allow for any sort of long-term or written contracting.

Interfering with the ability of prepaid wireless providers to communicate effectively with their subscribers would prevent companies like MetroPCS, who are succeeding with distinguishable business plans, from bringing much-needed competition to the broader wireless services market. Competition benefits both prepaid and postpaid consumers by increasing consumer choice and putting downward pressure on prices. Competition in the retail wireless services market is thriving, as 72.8 percent of the nation’s population have the option of five or more carriers, 90.8 percent have the option of four or more carriers, and 95.8 percent have the option of three or more carriers.<sup>16</sup> Adding unnecessary written consent requirements also would impose unnecessary additional administrative costs on American consumers already looking for every possible way to reduce their monthly household bills.

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<sup>14</sup> *Fourteenth Mobile Wireless Competition Report* at ¶ 102.

<sup>15</sup> *Id.* at ¶ 173.

<sup>16</sup> *Id.* at Table 6.

Congress intended to prevent unwanted solicitation and nuisance calls to subscribers, not to ban uncharged messages to existing wireless customers containing subscriber account information. In the TCPA itself, Congress referred to its goal of protecting Americans from “intrusive invasion of privacy” and to the “outrage[] over the proliferation of intrusive, nuisance calls to [customers’] homes from telemarketers.”<sup>17</sup> In the current *NPRM*, the Commission properly notes that one of its goals is “to further empower residential telephone subscribers to avoid receiving telephone solicitations to which they object.”<sup>18</sup> Customers are entitled to expect to receive important information regarding their wireless service as a part of the service itself. That is not objectionable. Consequently, these communications between service provider and customer surely do not fit into the notion of “nuisance” or an “intrusive invasion of privacy” the Commission and Congress seek to prevent.

### **III. CONCLUSION**

While the Commission’s efforts to protect consumers from unwanted telemarketing calls are admirable, it should avoid adopting a vague or overbroad scheme of rules that creates uncertainty around the relationship between wireless service providers and their subscribers. This cannot be what was initially intended for the TCPA and cannot be a desirable outcome for American wireless consumers.

Accordingly, MetroPCS concurs with Sprint that the Commission should clarify in section 64.1200(a)(1)(iii) that “the written consent requirement does not apply to calls to wireless numbers when the customer has otherwise previously consented to such calls, or calls from a

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<sup>17</sup> Telephone Consumer Protection Act of 1991, § 2, 105 Stat. 2394 (1991).

<sup>18</sup> 2010 *NPRM* at ¶ 2.

carrier to its customers when such calls are not charged to the customer.”<sup>19</sup> Additionally, MetroPCS supports Sprint’s argument in the alternative that the Commission should at least make clear that its rules do not apply to communications between cellular subscribers and wireless carriers for which the cellular subscriber is not charged.<sup>20</sup>

Respectfully submitted,

MetroPCS Communications, Inc.



By:

Carl W. Northrop

David Darwin

PAUL, HASTINGS, JANOFSKY & WALKER LLP

875 15th Street, NW

Washington, DC 20005

Telephone: (202) 551-1700

Facsimile: (202) 551-1705

Mark A. Stachiw

Executive Vice President, General Counsel and Secretary

Garreth Sarosi

Senior Counsel

MetroPCS Communications, Inc.

2250 Lakeside Blvd.

Richardson, Texas 75082

Telephone: (214) 570-5800

Facsimile: (866) 685-9618

Its Attorneys

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<sup>19</sup> Sprint Comments at 6.

<sup>20</sup> *Id.*