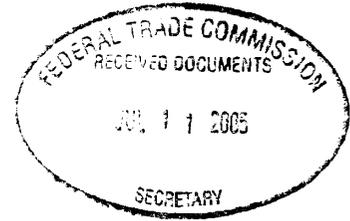


Before the
FEDERAL TRADE COMMISSION
Washington, D.C. 20554



In the Matter of)
)
Definitions, Implementation, and Reporting) Project No. R411008
Requirements Under the CAN-SPAM Act)
_____)

COMMENTS OF SPRINT CORPORATION

Sprint Corporation (“Sprint”) submits these comments in response to the Notice of Proposed Rulemaking (“NPRM”) that seeks comments on certain rule proposals to implement certain provisions of the Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003 (“CAN-SPAM Act” or “the Act”).¹ Sprint limits these comments to one of the issues raised in the NPRM – namely, whether the 10-business-day-opt-out period should be reduced to three business days.

I. SPRINT CORPORATION GENERALLY

Sprint offers an extensive range of innovative communication products and solutions, including global IP, wireless, local and multiproduct bundles, to business and residential customers nationwide.² Sprint makes extensive use of email in communicating with its customers. It does so because a growing number of customers prefer email communications compared to more traditional forms of communications such as mailings or telemarketing and because email is environmentally friendly. In addition, email communications benefit all customers because the cost

¹ See Federal Trade Commission, *Definitions, Implementation, and Reporting Requirements Under the CAN-SPAM Act*, Notice of Proposed Rulemaking, Project No. R411008, 70 Fed. Reg. 25426 (May 12, 2005).

² See www.sprint.com; www.sprintpcs.com; www.sprint.net.

of email is a small fraction of the cost of communications *via* postal services and a minuscule portion of communications *via* telephone, which result in operational cost savings that enable Sprint to offer better value to its customers.

Sprint takes great care in developing email campaigns because it realizes that customers value their time and privacy and do not want to be inundated by commercial email. Indeed, inundating customers with emails that customers do not value can be counterproductive and undermine the very purpose of an email campaign, by alienating the very people with whom the sender is attempting to communicate. Sprint believes that it has been successful in finding the right balance and in meeting customer needs, as evidenced by the fact that typically, less than one percent (1%) of recipients of Sprint emails choose to opt-out of receiving future emails from Sprint.

II. THE COMMISSION SHOULD RETAIN THE 10-DAY OPT OUT PERIOD GIVEN THE ABSENCE OF ANY DEMONSTRATED PROBLEM AND GIVEN THE COSTS BUSINESSES WOULD INCUR TO COMPLY WITH A 3-DAY RULE

Congress has declared it unlawful for a firm to send a commercial email “more than 10 business days after receipt” of an opt-out request by an email recipient,³ but it has given the Commission the discretionary authority to modify this 10-business-day period if it determines that a “different period would be more reasonable after taking into account . . . the burdens imposed on senders of lawful commercial electronic mail.”⁴ Although the CAN-SPAM Act has been in effect for less than 18 months, the Commission now proposes to reduce the opt-out period by 70 percent to three business days.⁵ Sprint urges the Commission to retain the current 10-

³ See 15 U.S.C. § 7704(a)(4)(A)(i).

⁴ See *id.* at § 7704(c)(1)(C).

⁵ See NPRM, 70 Fed. Reg. at 25442-44 and Proposed Rule 316.4(a).

day rule – at least until there is some evidence that “mail bombing” is a problem and further, that there is some confidence that a new Commission rule would be effective in minimizing such a problem.

Some parties have expressed concern that the current 10-day rule facilitates “mail bombing” by giving “a commercial spammer a LOT of time to send junk.”⁶ Yet, as the Commission recognizes, these concerns are “not supported by factual evidence that such practices actually occur”:

[T]he record does not demonstrate whether fears of “mail-bombing during an opt-out period are well founded.”⁷

Sprint submits that the Commission should not entertain adoption of more restrictive rules without at least *some* evidence that a “mail bombing” problem actually exists.

In addition, even if “mail bombing” was a problem, the Commission can have no confidence that a more restrictive rule would be effective in eliminating this problem. As noted above, legitimate firms like Sprint have no economic interest in engaging in “mail bombing,” as such a practice would only risk losing an existing customer to a competitor or convince a non-customer never to consider Sprint as an option.

Thus, a new three-day rule necessarily would be designed to address the practices of commercial spammers who have no interest in maintaining good relations with the recipients of their spam. But there is no reason for this Commission to believe that commercial spammers would comply with a three-day rule any more effectively than they comply with the current 10-day rule. The Commission’s recent observation to Congress – “it is extremely unlikely that out-

⁶ See NPRM, 70 Fed. Reg. at 25443.

⁷ *Id.* at 25443-44.

law spammers would comply with a requirement to label the email messages they send⁸ – applies equally well to the opt-out period.⁹

What adoption of a three-day opt-out period would do is impose new costs on the thousands of firms like Sprint that attempt to comply with the rules that the government adopts. Sprint estimates that it would have to devote at least 30,000 man hours, or in excess of \$2 million, in order to modify its systems to accelerate the process of implementing opt-out requests. Each of its additional email partners would need to make similar revisions to their own respective systems, and all parties would need to coordinate their work to ensure continued interoperability among systems.¹⁰ The Commission may deem these compliance costs as small, but it needs to consider the compliance costs of American businesses as a whole and remember that these costs would be imposed without any material corresponding benefit – because these firms do not engage in the complained of “mail bombing” practices.

The Commission appears to make its rule proposal under the assumption that because *some* firms can comply with a three-day rule, *all* companies should be able to comply with a three-day rule:

[T]he fact that many commenter already are able to process opt-out requests virtually instantaneously supports the conclusion that the opt-out period can and should be shortened. . . . Given that the record suggests that nearly instantaneous processing of a recipient’s request not to receive future e-mail messages can be

⁸ See FTC, *Subject Line Labeling As a Weapon Against Spam*, A CAN-SPAM Act Report to Congress, at i (June 2005).

⁹ Indeed, despite the explicit rights afforded in the CAN-SPAM Act, many consumers do not use an “opt-out” feature with spam because they understand that spammers are unwilling to comply with the law and that the consequences of opting out (*e.g.*, verifying a legitimate email address) may be worse than continuing to receive spam.

¹⁰ For this reason, Sprint recommends that the Commission adopt a 12-month transition period if it reduces the current 10-day opt-out period in any way.

accomplished without an undue burden. the Commission believes that shortening the opt-out period to three business days is appropriate.¹¹

Sprint submits that it is not reasonable to assume that all firms can easily comply with a three-day rule because some firms can do so. A small business oftentimes does not have the capabilities as a large business to accomplish tasks within a specified time. A firm that handles email campaigns in-house only will likely be able to meet deadlines earlier than a firm that uses outside vendors. And, a single product firm can generally meet deadlines more easily than a multi-product firm, whose different divisions (*e.g.*, local telephone, long distance, wireless) may use different systems and different procedures.

In summary, given that there is no evidence that “mail bombing” is a problem or that adoption of a shorter opt-out period would be effective in accomplishing the objective of the rule proposed, coupled with the fact that the new rule would impose sizable compliance costs on thousands of firms with minimal benefit, Sprint urges the Commission to maintain the current 10-business-day-opt-out period. Sprint encourages the Commission to focus instead on continued prosecution of spammers who have shown an utter disregard for the current laws and implementing rules.

¹¹ NPRM, 70 Fed. Reg. at 25444.

III. CONCLUSION

For the foregoing reasons, Sprint Corporation respectfully requests that the Commission retain the current 10-business-day opt-out period.

Respectfully submitted,

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