

IN THE MATTER OF
STATE OF TEXAS

v.

SPRINT SPECTRUM, L.P., a subsidiary of
SPRINT NEXTEL CORPORATION d/b/a
SPRINT PCS,
Respondent

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IN THE DISTRICT COURT OF

TRAVIS COUNTY, TEXAS

250th JUDICIAL DISTRICT

Filed in the District Court
of Travis County, Texas

FEB - 5 2007
M. J. ...
Clerk

STATE OF TEXAS' PETITION TO ENFORCE ASSURANCE OF COMPLIANCE AND APPLICATION FOR TEMPORARY INJUNCTION, PERMANENT INJUNCTION AND CIVIL PENALTIES

TO THE HONORABLE JUDGE OF SAID COURT:

Plaintiff, the STATE OF TEXAS, acting by and through the Attorney General of Texas, GREG ABBOTT, files this Petition against SPRINT SPECTRUM, L.P., a subsidiary of SPRINT NEXTEL CORPORATION D/B/A SPRINT PCS (hereinafter "SPRINT" or "Respondent") in order to secure enforcement of an ASSURANCE OF VOLUNTARY COMPLIANCE, to remedy violations of the Texas Deceptive Trade Practices Act, and to obtain a TEMPORARY INJUNCTION, PERMANENT INJUNCTION and PENALTIES.

I.

ENFORCEMENT OF ASSURANCE OF VOLUNTARY COMPLIANCE

1.1 On July 7, 2004, the Office of the Texas Attorney General concluded an inquiry into possible deceptive trade practices by SPRINT through entry of an Assurance of Voluntary Compliance ("AVC") on behalf of SPRINT SPECTRUM, L.P. d/b/a SPRINT PCS ("SPRINT"), pursuant to § 17.58 of the TEXAS DECEPTIVE TRADE PRACTICES--CONSUMER PROTECTION ACT, TEX.

BUS. & COM. CODE (Vernon 2002 and Supp. 2006) (“DTPA”).

1.2 In that AVC, SPRINT agreed that in the future it would conduct certain business practices in accordance with agreed upon terms. In particular, with respect to consumers’ bills, SPRINT agreed to the following:

“On Consumers’ bills, Carrier will:

- a. separate (i) taxes, fees, and other charges that Carrier is required to collect directly from Consumers and remit to federal, state, or local governments, or to third parties authorized by such governments, for the administration of government programs, from (ii) monthly charges for Wireless Service and/or Enhanced Features and all other discretionary charges (including, but not limited to, Universal Service Fund fees), except when such taxes, fees, and other charges are bundled in a single rate with the monthly charges for Wireless Service and/or Enhanced Features and all other discretionary charges; and
- b. not represent, expressly or by implication, that discretionary cost recovery fees are taxes.”

1.3 Section 17.58(c) of the DTPA provides that unless an assurance has been rescinded or voided, a failure to comply with its terms is prima facie evidence of a violation of the DTPA.

1.4 Respondent was fully aware of the specific terms of the AVC at the time of its entry as evidenced by the signature of its President. Further, since entry of the AVC, SPRINT has made public declarations that it has agreed to abide by its terms.

1.5 Respondent is now acting in violation of the AVC, and in violation of the DTPA, as detailed in the factual allegations below, thus necessitating this petition.

II.

DISCOVERY CONTROL PLAN

2.1 Pursuant to § 17.58, Tex. Bus. & Com. Code, matters closed by the filing of an AVC may be reopened at any time. Plaintiff submits that discovery in this proceeding should be

conducted under Level 2 pursuant to Tex. R. Civ. P. 190.3.

III.

JURISDICTION

3.1 This enforcement action is brought by Attorney General Greg Abbott, through his Consumer Protection & Public Health Division, in the name of the State of Texas and in the public interest under the authority granted to him by TEXAS DECEPTIVE TRADE PRACTICES--CONSUMER PROTECTION ACT, TEX. BUS. & COM. CODE § 17.41, *et seq.* (Vernon 2002 and Supp. 2006)(“DTPA”), upon the grounds that SPRINT has engaged in false, misleading and deceptive acts and practices in the conduct of trade and commerce as defined and declared unlawful by § 17.46(a) and (b) of the DTPA.

IV.

NATURE OF RESPONDENT’S OPERATIONS

4.1 Respondent provides wireless voice and data communication services and provides wireless telephone service to consumers in the State of Texas, as well as to consumers in other parts of the country. SPRINT PCS is the assumed name under which Respondent provides wireless service.

V.

PUBLIC INTEREST

5.1 Because the STATE OF TEXAS has reason to believe that Respondent has engaged in, and will continue to engage in, the unlawful practices set forth below, Plaintiff STATE OF TEXAS has reason to believe that Respondent has caused, and will cause, adverse effects to legitimate business enterprise which conducts its trade and commerce in a lawful manner in this

State. Therefore, the Consumer Protection & Public Health Division of the Office of the Attorney General of Texas believes and is of the opinion that these proceedings are in the public interest.

VI.

TRADE AND COMMERCE

6.1 Respondent is engaged in trade and commerce as that term is defined by § 17.45(6) of the DTPA.

VII.

ACTS OF AGENTS

7.1 Whenever in this Petition it is alleged that Respondent did any act, it is meant that:

- a. Respondent performed or participated in the act; or
- b. Respondent's officers, agents, or employees performed or participated in the

act on behalf of and under the authority of the Respondent.

VIII.

STATEMENT OF FACTS

8.1 In or about December 2006, SPRINT began including the following sentence in bills sent to Texas consumers: *Effective January 1, 2007, SPRINT will begin charging Texas customers a 1% Texas Margin Fee Reimbursement in the Surcharges and Fees section of your invoice.* The bill advised consumers who wanted details to *"see the SPRINT PCS Terms and Conditions of Service."* See Exhibit A.

8.2 Although this notice represented that details regarding this fee were available at SPRINT PCS's Terms & Conditions of Service, in fact, those Terms and Conditions of Service included only a general description of "surcharges" and offered no explanation or detail regarding

this new fee.

8.3 In or about January 2007, SPRINT began sending bills to Texas consumers which for the first time included a line item for this "Texas Margin Fee Reimbursement" charge. On some bills, this charge was included under the subheading "Government Fees & Taxes," where items such as the state sales tax which SPRINT is required to charge individual customers are listed. See Exhibit A.

8.4 On other bills this charge appeared under "Surcharges and Fees." This is the section where line items such as the Federal E911 fee are listed together with other fees which are related to federal and state telecommunications mandates which carriers are allowed, but not required, to pass on to consumers.

8.5 In truth and in fact, there is no "Texas Margin Fee" which SPRINT is required to collect from consumers. In response to media inquiries regarding this fee, SPRINT's agents represented that this fee was related to the Texas Franchise Tax (referred to as the "Texas Margin Tax").

8.6 The Texas Margin Tax, enacted by the Texas 79th Legislature (3rd Called Session) becomes effective January 1, 2008, and related taxes are due no earlier than January 2008. SPRINT will be required to pay the "Texas Margin Tax" at that time and thus, cannot truthfully represent that any amounts it seeks to collect in 2007 from consumers is a "reimbursement" of the Texas Margin Fee.

8.7 SPRINT's use of the phrase "Texas Margin Fee Reimbursement" in bills it sends consumers causes confusion as it implies that the State of Texas has imposed this fee on the consumers of Texas or somehow endorsed SPRINT's decision to impose the fee. In truth and in fact,

"Texas Margin Fee" refers to a discretionary cost recovery fee which SPRINT has elected to add to consumers' bills in order to recover part of its cost of doing business.

8.8 SPRINT's use of "1%" with regard to the "Margin Fee" causes confusion, as it implies that there is a precise amount which is due from the consumer, when in fact according to SPRINT representatives this 1% is based on an estimate of what SPRINT wants to collect from consumers in anticipation of the amount it will eventually be required to pay in 2008.

8.9 Further, neither SPRINT'S statement nor the terms and conditions of service offers an explanation of what base charges are subject to this 1% fee.

IX.

VIOLATIONS OF ASSURANCE OF VOLUNTARY COMPLIANCE

9.1 The State incorporates and adopts by reference the allegations contained in each and every preceding paragraph of this petition.

9.2 Respondent, as alleged and detailed above, has violated the terms of the Assurance of Voluntary Compliance and thus, has engaged in per se violations of § 17.46(a) of the DTPA which provides that false, misleading and deceptive acts and practices are declared unlawful.

9.3 More specifically, in the AVC, SPRINT represented that it would separate mandated taxes and fees from monthly service charges and discretionary charges. In violation of that provision, SPRINT placed a discretionary charge labeled "Texas Margin Fee Reimbursement" under the government taxes and fees section of bills it sent to Texas consumers.

9.4 In the AVC, SPRINT agreed that it would not expressly represent that discretionary cost recovery fees are taxes. In violation of that provision, SPRINT placed a cost recovery fee labeled the "Texas Margin Fee Reimbursement" in the government taxes and fees section of bills it

sent to Texas consumers, thus expressly representing that SPRINT's discretionary fee was a tax.

9.5 In the AVC, SPRINT agreed not to represent by implication that discretionary cost recovery fees are taxes. In violation of that provision, SPRINT includes reference to the State of Texas, and to the term Margin Fee (by which the new Texas tax is known), in naming the discretionary cost recovery fee at issue, implying that this is a Texas tax that consumers are required to pay.

X.

VIOLATIONS OF THE TEXAS DECEPTIVE TRADE PRACTICES ACT

10.1 The State incorporates and adopts by reference the allegations contained in each and every preceding paragraph of this petition.

10.2 Respondent, as alleged and detailed above, has in the course of trade and commerce, violated § 17.46(b)(3) of the DTPA by causing confusion or misunderstanding as to affiliation, connection, or association with, or certification by, another.

10.3 Respondent, as alleged and detailed above, has in the course of trade and commerce violated § 17.46(b)(5) of the DTPA by representing that a person has a sponsorship, approval, status, affiliation, or connection which he does not.

10.4 Respondent, as alleged and detailed above, has in the course of trade and commerce violated § 17.46(b)(12) of the DTPA by representing that an agreement confers or involves rights, remedies, or obligations which it does not have or involve, or which are prohibited by law.

XI.

PRAYER

11.1 By reason of the acts and practices described herein above, Respondent has violated

and will continue to violate the laws as herein alleged unless enjoined by this Honorable Court.

11.2 WHEREFORE, PREMISES CONSIDERED, Plaintiff requests that upon hearing a Temporary Injunction be issued commanding Respondent, its agents, servants, employees, and representatives to take all necessary steps to assure that within 10 days of the entry of the Temporary Injunction, SPRINT shall cease:

- a. Representing to consumers that a charge or fee on a consumer's bill is a reimbursement of a Texas Governmental tax or fee to SPRINT, unless it actually is;
- b. Using the phrase "Texas Margin Fee Reimbursement," or any derivative thereof, in any bills sent to customers;
- c. Representing, directly or by implication, that any cost recovery fee it elects to impose on its customers is a tax;
- d. Representing, directly or by implication, that any cost recovery fee it elects to impose on its customers is a fee or charge which a governmental entity requires SPRINT to pass on to consumers unless such is in fact the case;
- e. Collecting payment from consumers pursuant to the "Texas Margin Fee Reimbursement" charge which has appeared on bills sent to Texas consumers; and
- f. Representing, directly or by implication, to Texas consumers that the State of Texas obligates consumers to pay any specific fee or tax, which in fact Texas law obligates Respondent to pay.

11.3 Plaintiff further prays that after hearing on Temporary Injunction, this Court order

Respondent to take the following action:

- a. Within 48 hours of entry of the Temporary Injunction, place all funds it has received from Texas consumers for its "Texas Margin Fee Reimbursement" in a segregated trust fund, subject to a final Order of this Court;
- b. Within seven business days of the execution of the Temporary Injunction, submit a report to the Office of the Texas Attorney General verifying the total number of Texas consumers Respondent has charged for its "Texas Margin Fee Reimbursement," the total amount of funds it has received from Texas consumers for such charges, and the total amount of funds that have been placed into a trust account pursuant to this Temporary Injunction; and
- c. Within thirty days of entry of the Temporary Injunction, submit a report to the Office of the Texas Attorney General describing the specific actions SPRINT has taken to comply with the terms of the preceding paragraph 11.2.

11.4 Plaintiff further requests, that upon final hearing, this Court enter a PERMANENT INJUNCTION enjoining Respondent from engaging in the following conduct:

- a. Representing to consumers that a charge or fee on a consumer's bill is a reimbursement of a Texas Governmental tax or fee to SPRINT, unless it actually is;
- b. Using the phrase "Texas Margin Fee Reimbursement," or any derivative thereof, in any bills sent to customers;
- c. Representing, directly or by implication, that any cost recovery fee it elects to impose on its customers is a tax;

- d. Representing, directly or by implication, that any cost recovery fee it elects to impose on its customers is a fee or charge which a governmental entity requires SPRINT to pass on to consumers, unless such is in fact the case;
- e. Collecting payment from consumers pursuant to the "Texas Margin Fee Reimbursement" charge which has appeared on bills sent to Texas consumers; and
- f. Representing, directly or by implication, to Texas consumers that the State of Texas obligates consumers to pay any specific fee or tax, which in fact Texas law obligates Respondent to pay.
- g. Failing to comply with Paragraph 36 of the AVC which reads as follows:
 - A. separate (i) taxes, fees, and other charges that Carrier is required to collect directly from Consumers and remit to federal, state, or local governments, or to third parties authorized by such governments, for the administration of government programs, from (ii) monthly charges for Wireless Service and/or Enhanced Features and all other discretionary charges (including, but not limited to, Universal Service Fund fees), except when such taxes, fees, and other charges are bundled in a single rate with the monthly charges for Wireless Service and/or Enhanced Features and all other discretionary charges; and
 - B. not represent, expressly or by implication, that discretionary cost recovery fees are taxes.

11.5 Plaintiff further prays, that upon final hearing, this Court will order Respondent to:

- a. Pay civil penalties of \$20,000.00 per violation of the DTPA to the State of Texas;
- b. Credit the accounts of all Texas consumers who were charged the Texas Margin Fee Reimbursement in an amount equal to what each consumer was charged;
- c. Pay pre-judgment interest on all awards of restitution, damages or civil penalties, as provided by law; and
- d. Pay all costs of Court, costs of investigation, and reasonable attorney's fees incurred by the State pursuant to TEX. GOVT. CODE ANN. § 402.006(c).

11.6 Plaintiff further prays for post-judgment interest and such other relief to which the State of Texas may be justly entitled.

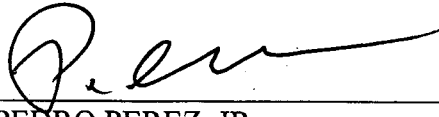
Respectfully submitted,

GREG ABBOTT
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ATTORNEYS FOR THE STATE

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument has been sent on this the 5th day of February, 2007, to the Respondent SPRINT SPECTRUM, L.P., through its registered agent, Corporation Service Company, via certified mail return receipt requested, to 701 Brazos Street, Suite 1050, Austin Texas 78701 with a courtesy copy to Brian Pedati, Director of Litigation, 2001 Edmund Halley Drive, Reston, Virginia 20191, fax (703) 433-1036.



PEDRO PEREZ, JR

ASSISTANT ATTORNEY GENERAL

EXHIBIT A

Customer	Account Number	Billing Period	Billing Date	Page
[REDACTED]	[REDACTED]	Nov 4 - Dec 3	Dec 4, 2006	2 of 4

Account Summary

New Rates for DA and Nonpayment Reconnect. Effective February 2007, Sprint will charge \$1.79 per call for directory assistance. Also effective February 2007, a reconnect fee of \$25 will be charged per account if your account is disconnected for nonpayment.

Texas Margin Fee Reimbursement. Effective January 2007, Sprint will begin charging Texas customers a 1% Texas Margin Fee Reimbursement in the Surcharges and Fees section of your invoice. For details on fees, see the Sprint PCS Terms & Conditions of Service.

Charges by Line

Monthly Service Charges	Additional Usage Charges & Purchases	Other Charges	Other Credits & Adjustments	Taxes, Surcharges & Fees	Total
\$35.00	\$0.00	\$0.00	\$0.00	\$6.57	\$41.57

Taxes, Surcharges & Fees

Government Fees & Taxes

Austin City District Tax	\$0.38
Austin City Sales Tax - Services & Usage	0.38
Texas State Sales Tax - Services & Usage	2.37
Texas State Wireless 911	0.50

Surcharges & Fees

Texas State Universal Svc Fund Surcharge	1.26
Texas State Tif Reimbursement	0.46
Federal USF Non-Ld Surcharge	0.67
Federal Wireless Number Pooling And Portability	0.15
Federal E911	0.40
	\$6.57



Customer	Account Number	Bill Period	Bill Date	Page
[REDACTED]	[REDACTED]	Dec 4 - Jan 3	Jan 4, 2007	2 of 4

Account Summary

Important Notice.

The Terms & Conditions for Sprint PCS and Nextel services have been updated. These new terms are effective immediately, and are available at www.sprint.com or upon request. Please carefully review these terms as they apply to any future use of our services.

New Rates for DA and Nonpayment Reconnect. Effective February 2007, Sprint will charge \$1.79 per call for directory assistance. Also effective February 2007, a reconnect fee of \$25 will be charged per account if your account is disconnected for nonpayment.

Charges by Line

	Monthly Service Charges	Additional Usage Charges & Purchases	Other Charges	Other Credits & Adjustments	Taxes, Surcharges & Fees	Total
[REDACTED]	\$35.00	\$0.00	\$0.00	\$0.00	\$6.98	\$41.98

Taxes, Surcharges & Fees

Government Fees & Taxes

Austin City District Tax	\$0.38
Texas Margin Fee Reimbursement	0.35
Austin City Sales Tax - Services & Usage	0.38
Texas State Sales Tax - Services & Usage	2.37
Texas State Wireless 911	0.50

Surcharges & Fees

Texas State Universal Service Fund	1.26
Texas State Tif Reimbursement	0.46
Federal USF Non-Ld Surcharge	0.73
Federal Wireless Number Pooling And Portability	0.15
Federal E911	0.40
	<u>\$6.98</u>