

**LEGAL SERVICES ADVOCACY PROJECT**

**MANAGING  
ATTORNEY**  
Maureen O'Connell

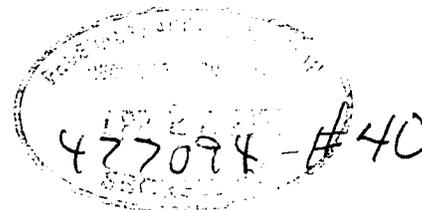
**ATTORNEYS**  
Barbara Collins  
Kathleen McDonough  
Nancy Mischel  
Carrie Thomas  
Reggie Wagner

**ADVOCATE**  
Ron Elwood

**OFFICE MANAGER**  
Colette Bergeron

Suite 101 Midtown Commons  
2324 University Avenue  
St. Paul, MN 55114  
(651) 222-3749 Fax: (651) 603-2750

**ORIGINAL**



April 20, 2000

Office of the Secretary  
Federal Trade Commission  
Room 159  
600 Pennsylvania Avenue, N.W.  
Washington, D.C. 20580

Re: **Telemarketing Review- Comment**  
**FTC File No. P994414**

To Whom It May Concern:

The Legal Services Advocacy Project (LSAP) respectfully submits comments concerning FTC File No. P994414, the Federal Trade Commission's inquiry into the Telemarketing Sales Rule (TSR), 16 CFR 310. LSAP is a statewide division of Mid-Minnesota Legal Assistance, and it represents the interests of low-income Minnesotans in legislative and administrative forums.

As banking, insurance, securities and other commercial enterprises and services converge, the need for telemarketing regulation becomes important, and, thus, LSAP believes that not only is there is a continuing need for the TSR, but there is a need to expand it. While other federal and state laws regulate certain of these products and services, the sharing of information, including account numbers, among both affiliated and nonaffiliated industries and businesses makes strengthening the rules governing telemarketing a necessary part of consumer protection.

The Minnesota Attorney General's office has testified before Minnesota legislative committees on a number of bills that would enhance privacy protections for consumers. The testimony on these bills invariably discusses the stacks of complaints received concerning misleading, deceptive or outright fraudulent practices of telemarketers. And, as any consumer protection agency is well aware, the number of complaints actually filed with a government agency is "the tip of the iceberg," and indicates a far greater number of consumers being affected by deceptive practices than have actually formally filed grievances.

Legal Aid attorneys in Minnesota, especially those handling cases involving senior citizens, handle many cases involving telemarketing abuses. In one particularly egregious case, we found that a senior citizen, with limited mental capacity, was sold by a telemarketer credit unemployment insurance, dental insurance and auto insurance when the consumer had neither a job, nor teeth nor an automobile.

### Suggested Modifications to 16 CFR 310

LSAP proposes to add the definitions of "account," "account holder," "inbound telephone call," and "preacquired account number" to Section 310.2. LSAP believes these definitions are necessary to more accurately reflect the type of telemarketing practices that are taking place.

Many telemarketers already have customers' credit card, debit card, checking, savings, loan or other account numbers prior to initiating a call or are able to call up those sorts of accounts when receiving an inbound call from a prospective customer. As a result of this ability to preacquire such accounts, Minnesota is seeing, wherein telemarketers charge customers' accounts with questionable or a complete lack of customer authorization. To combat this abusive practice, LSAP proposes to strengthen Section 310.3 (3) of the TSR, the delineation of deceptive telemarketing acts or practices, to more clearly define what constitutes customer authorization. Specifically, in addition to written authorization and confirmation, LSAP proposes to amend the description of oral authorization to require that, where telemarketers possess preacquired account numbers, customers must provide the last four digits of that account number in order for oral authorization to be deemed verified. Placing this responsibility on sellers would not only reduce the number of unauthorized charges appearing on consumers' bills, but it would also cut down on costs to banks and sellers from dealing with consumer complaints and consumer protection authority interventions and prosecutions.

Finally, LSAP proposes to amend Section 310.4 (d) to clarify that upon a customer answering an outbound telemarketing call, the telemarketer must disclose the identity of the seller and that the purpose of the call is to sell goods or services.

The following are LSAP's specific proposed language changes and additions that would modify 16 CFR 310 (~~stricken~~ = old language to be removed; underscored = new language to be added):

1. Amend Section 310.2 to read:

(a) Account means a credit card, debit card, checking account, savings account, loan account or other similar account.

(b) Account holder means a person who owns an account, or a person who has authority to charge or debit an account.

~~(a)~~ (c) Acquirer means a business organization, financial institution, or an agent of a business organization or financial institution that has authority from an organization that operates or licenses a credit card system to authorize merchants to accept, transmit, or process payment by credit card through the credit card system for money, goods or services, or anything else of value.

- (b) (d) *Attorney general* means the chief legal officer of a State.
- (c) (e) *Cardholder* means a person to whom a credit card is issued or who is authorized to use a credit card on behalf of or in addition to the person to whom the credit card is issued.
- (d) (f) *Commision* means the Federal Trade Commission.
- (e) (g) *Credit* means the right granted by a creditor to a debtor to defer payment of debt or to incur debt and defer its payment.
- (f) (h) *Credit card* means any card, plate, coupon book, or other credit device existing for the purpose of obtaining money, property, labor, or services on credit.
- (g) (i) *Credit card sales draft* means any record or evidence of a credit card transaction.
- (h) (j) *Credit card system* means any method or procedure used to process credit card transactions involving credit cards issued or licensed by the operator of that system.
- (i) (k) *Inbound telephone call* means a telephone call initiated by a customer to a telemarketer, or a telephone call transferred to a telemarketer by another person, during which the discussion involved the inducement by a telemarketer to purchase goods or services.
- (j) (l) *Investment opportunity* means anything, tangible or intangible, that is offered, offered for sale, sold, or traded based wholly or in part on representations, either express or implied, about past, present, or future income, profit, or appreciation.
- (k) (m) *Material* means likely to affect a person's choice of, or conduct regarding, goods or services.
- (l) (n) *Merchant* means a person who is authorized under a written contract with an acquirer to honor or accept credit cards, or to transmit or process for payment credit card payments, for the purchase of goods or services.
- (m) (o) *Merchant agreement* means a written contract between a merchant and an acquirer to honor or accept credit cards, or to transmit or process for payment credit card payments, for the purchase of goods or services.
- (n) (p) *Outbound telephone call* means a telephone call initiated by a telemarketer to induce the purchase of goods or services.
- (o) (q) *Person* means any individual, group, unincorporated association, limited or general partnership, corporation, or other business entity.
- (r) *Preacquired account number* means a checking, savings, credit card, or other similar identification of financial holdings or credit in the possession of the telemarketer, whether known or unknown to a customer, during the pendency of an inbound or outbound telephone call.

Renumber the remainder of the section accordingly.

2. Amend Section 310.3 (3) to read:

Obtaining or submitting for payment a check, draft, or other form of negotiable paper drawn on a person's checking, savings, share, credit card, or similar account, without that person's express verifiable authorization. Such authorization shall be deemed verifiable if any of the following means are employed:

(i) Express written authorization by the customer, which may include the customer's signature on the negotiable instrument; or

(ii) Express oral authorization, which is tape recorded and made available upon request to the customer's bank and which evidences clearly both the customer's authorization of payment for the goods and services that are the subject of the sales offer and, In the case where a telemarketer possesses a preacquired account number, express oral authorization consists of an oral or written statement from the account holder disclosing the last four digits of the account number, if the telemarketer has reasonable procedures to verify that the last four digits provided by the account holder match the last four digits of the account to be charged. In addition the tape recording must evidence the customer's receipt of all of the following information:

- (A) The date of the draft(s);
- (B) The amount of the draft(s);
- (C) The payor's name;
- (D) The number of draft payments (if more than one);
- (E) A telephone number for customer inquiry that is answered during normal business hours; and
- (F) The date of the customer's oral authorization; or

(iii) Written confirmation of the transaction, sent to the customer prior to submission for payment of the customer's check, draft, or other form of negotiable paper, that includes:

- (A) All of the information contained in §§ 310.3(a)(3)(ii)(A)-(F); and
- (B) The procedures by which the customer can obtain a refund from the seller or telemarketer in the event the confirmation is inaccurate; and

3. Amend Section 310.4 (d) to read:

**Required oral disclosures.** It is an abusive telemarketing act or practice and a violation of this Rule for a telemarketer in an outbound telephone call to fail to disclose promptly at the outset of the call and in a clear and conspicuous manner to the person receiving the call the identity of the caller and that the purpose of the call is to sell goods or services. In addition, the following information must be disclosed during the call:

- ~~(1) The identity of the seller.~~
- ~~(2) That the purpose of the call is to sell goods or services.~~
- ~~(3) (1) The nature of the goods or services; and~~
- ~~(4) (2) That no purchase or payment is necessary to be able to win a prize or participate in a prize promotion if a prize promotion is offered. This disclosure must be made before or in conjunction with the description of the prize to the person called. If requested by that person, the telemarketer must disclose the no-purchase/no-payment entry method for the prize promotion.~~

Thank you for the opportunity to comment on FTC File No. P994414, the Federal Trade Commission's inquiry into the Telemarketing Sales Rule (TSR), 16 CFR 310. If you have any questions or need additional information, I can be reached by telephone at 651-222-3749, ext. 109 or by e-mail at [relwood@mnlisap.org](mailto:relwood@mnlisap.org).

Sincerely,



Ron Elwood  
Legislative Advocate