

**BEFORE THE  
FEDERAL TRADE COMMISSION  
WASHINGTON, D.C. 20580**

In the Matter of )  
)  
Telemarketing Rulemaking – Comment )     FTC File No. R411001  
)

**Comments of the Legal Services Advocacy Project**

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March 25, 2002

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The Legal Services Advocacy Project (LSAP) respectfully submits the following comments in response to the Notice of Proposed Rulemaking (NOPR) to amend the Telemarketing Sales Rule (TSR or the Rule), issued by the Federal Trade Commission (the Commission) in January. Telemarketing Sales Rule, 67 Fed. Reg. 4491 (proposed January 30, 2002) (to be codified at 16 C.F.R. pt. 310). LSAP is a statewide division of Mid-Minnesota Legal Assistance, representing the interests of low-income Minnesotans in state and federal legislative and administrative forums. LSAP commends the Commission for its efforts to expand consumer protection with respect to telemarketing practices. LSAP generally supports the proposed amendments, and offers a number of specific technical and substantive suggestions.

## Introduction

In 1994, Congress enacted the Telemarketing Consumer Fraud and Abuse Prevention Act (“the Telemarketing Act”) to “offer consumers necessary protection from telemarketing deception and abuse.” Telemarketing Consumer Fraud and Abuse Prevention Act, 15 U.S.C. § 6101 (1994). Pursuant to the Telemarketing Act, the Commission adopted the TSR, which became effective on December 31, 1995. FTC Telemarketing Sales Rule, 16 C.F.R §§ 310.1 – 310.8 (2002).

The Telemarketing Act also required the Commission to initiate an evaluation of the TSR no later than five years after its effective date. 15 U.S.C. § 6108. The Commission conducted the mandatory review and, subsequently, sought public comments “about the overall costs and benefits of the TSR, and its overall regulatory and economic impact since its adoption in 1995.” Telemarketing Sales Rule, 65 Fed. Reg. 10428, 10428 (proposed February 28, 2000). LSAP’s was among the 92 comments received by the Commission “from representatives of industry, law enforcement, and consumer groups, as well as from individual consumers.” NOPR at 6.

In its NOPR, the culmination of the extensive review of written comments and the results of the several public forums held, the Commission proposes a number of amendments to the TSR. Written comments are sought “to assist the Commission in determining whether the proposed modifications strike the appropriate balance, maximizing consumer protections while avoiding the imposition of unnecessary burdens on the legitimate telemarketing industry.” *Id.* at 9.

## **Additional Protections are Necessary**

The Commission notes the views of many commenters, including LSAP, that “despite the success of the Rule in correcting many of the abuses in the telemarketing industry, complaints about deceptive and abusive telemarketing practices continue to flow into the offices of consumer groups and law enforcement agencies.” *Id.* at 8.

Telemarketing fraud and abuse continue to plague the nation’s consumers. AARP estimates that there are “10,000 fraudulent telemarketing operations calling hundreds of thousands of American consumers every day.”<sup>1</sup> According to the National Consumers League, “[a] Louis Harris survey...found that 92 percent of adults in the United States reported receiving fraudulent telephone offers.”<sup>2</sup> The United States Department of Justice lists fourteen different fraudulent telemarketing schemes on its website.<sup>3</sup>

At issue are both the significant financial losses sustained and substantial privacy invasions experienced by consumers as a result of telemarketing activities. Congress has estimated that telemarketing fraud costs consumers \$40 billion a year,<sup>4</sup> while the National Fraud Information Center estimates it costs the average victim \$1,174.<sup>5</sup> An AARP survey conducted in the State of Minnesota found that more than “three-quarters of Minnesota residents receive telemarketing calls more than once a week [and] 82 percent view [the calls] as an *invasion of their privacy and an unwelcome intrusion....*”<sup>6</sup>

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1 “Telemarketing Fraud,” AARP, <http://www.aarp.org/fraud/home.htm>; accessed March 24, 2002.

2 National Fraud Information Center “What is Telemarketing?” <http://www.fraud.org/telemarketing/teleinfo.htm>; accessed March 22, 2002.

3 They include schemes involving charity; credit repair; loans; credit cards; cross-border; Internet-related; investment; business opportunity; lottery; magazine promotion; office supply; prize promotion; “recovery room,” and “rip-and-tear.” Department of Justice, “What is Telemarketing Fraud?” <http://www.usdoj.gov/criminal/fraud/telemarketing/whatis.htm>; accessed March 20, 2002.

4 Telemarketing Consumer Fraud and Abuse Prevention Act, Pub. L. No. 103-297, 108 Stat 1545 (1994).

<sup>5</sup> “National Fraud Information Center, “What is Telemarketing?”

6 AARP Knowledge Management, “Minnesota Telemarketing Fraud and “Do Not Call” List: An AARP Survey” (Washington: AARP, 2001), pps. 1, 2. (emphasis in original).

The fact that telemarketing fraud and abuse remain serious consumer problems is evidenced by the continued attention paid to this subject by enforcement, regulatory and consumer agencies, including the Commission, and the proliferation of information about telemarketing fraud and abuse on these organizations' web pages.<sup>7</sup>

## Comments

### A. Definitions

#### 1. "Billing Information"

In the NOPR, the Commission correctly recognized a "change in the marketplace" marked by "[t]he growth of electronic commerce and payment systems technology

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7 See e.g., Federal Trade Commission, "Telemarketing Fraud: Ditch the Pitch," <http://www.ftc.gov/bcp/conline/edcams/telemarketing>; accessed March 24, 2002; United States Department of Justice; "Telemarketing Fraud," <http://www.usdoj.gov/criminal/fraud/telemarketing/>; accessed March 24, 2002; Department of Justice, Federal Bureau of Investigation; "Telemarketing Fraud," [http://www.fbi.gov/hq/cid/fc/ec/about/about\\_tm.htm](http://www.fbi.gov/hq/cid/fc/ec/about/about_tm.htm) accessed March 24, 2002; United States Postal Service; "Characteristics of Telemarketing Fraud Schemes," <http://www.usps.com/websites/depart/inspect/foneact.htm>; accessed March 24, 2002; United States Department of Health and Human Services, Administration on Aging, "Operation Unload Alerts Victims About Telemarketing Fraud," <http://www.aoa.gov/pr/telemark/html>; accessed March 24, 2002; "U.S. Customs Telemarketing Fraud," <http://www.customers.ustreas.gov/enforcem/telemarketing.htm#top>; Florida Division of Consumer Services; "Recognize and Avoid Telemarketing Fraud," [http://www.800helpfla.com/telemkt\\_text.html](http://www.800helpfla.com/telemkt_text.html); accessed March 24, 2002; Montana Department of Administration; "Telemarketing Fraud Unit," <http://www.discoveringmontana.com/doa/consumerProtection/TelemarkFraud.htm>; accessed March 24, 2002; Wisconsin Department of Financial Services; "DFI Tips to Avoid Telemarketing Fraud," [http://www.wdfr.org/yymm.tip\\_of\\_month/jan22.htm](http://www.wdfr.org/yymm.tip_of_month/jan22.htm); accessed March 24, 2002; National Association of Attorneys General, "Consumers kNOw Fraud," <http://www.naag.org/features/fraud.cfm>; accessed March 24, 2002; Butte County (California) District Attorney; "Telemarketing Fraud," <http://now2000.com/fraud/telemark.html>; accessed March 24, 2002; City of Mesa (Arizona) Police Department; "Telemarketing Fraud," <http://www.ci.mesa.az.us/police/telemarket.htm>; accessed March 24, 2002; City of Mesa (Arizona) Police Department; "Telemarketing Fraud," <http://www.ci.mesa.az.us/police/telemarket.htm>; accessed March 24, 2002; Hendersonville (Tennessee) Police Department, "Fighting Fraud Against Older Consumers," <http://www.hendersonville-pd.org/PreventionTips/TelMartFraud.html>; accessed March 24, 2002; AARP; "The Do's and Don'ts," <http://www.aarp.org/fraud/home.htm>; accessed March 24, 2002; National Fraud Information Center (National Consumers League), "What is Telemarketing?" <http://www.fraud.org/telemarketing/teleinfo.htm>; accessed March 24, 2002; Better Business Bureau, "Latest Telemarketing Pitches That Don't Ring True," <http://www.bbb.org/library/telemarketing.asp>; accessed March 24, 2002; Consumer Action; "Preventing Telemarketing Fraud," [http://www.consumer-action.org/Library/English/Telephone/TP-F-02\\_EN/TP-F-02\\_EN.html](http://www.consumer-action.org/Library/English/Telephone/TP-F-02_EN/TP-F-02_EN.html); accessed March 24, 2002; University of Arkansas, Division of Agriculture, Cooperative Education Service, "Telemarketing Fraud," <http://www.arfamilies.org/money/consumerprotection/telemarketing.asp>; accessed March 24, 2002; Oklahoma Seniors Against Fraud; "Telemarketing Fraud Prevention Tips," <http://www.ok-saf.org/fraud.html>; accessed March 24, 2002.

[which] has led, and likely will continue to lead, to new forms of payment and further changes in the way consumers pay for goods and services they purchase through telemarketing.” Id. at 10-11. In recognition of these changes, the Commission proposes the addition of a new definition, “billing information.” Telemarketing Sales Rule, 67 Fed. Reg. at 4491, 4540. The Commission further proposes both a prohibition against third party sharing and the recitation of such billing information during the process of obtaining consumer authorization to charge an account. Id. at 4542. Regarding the definition, the Commission seeks comment on whether it is sufficiently broad or overbroad.

LSAP supports the addition of this definition, and believes that it does not overreach. However, in recognition of that fact that as yet unknown methods may emerge in the future, LSAP proposes the following modification to the definition to avoid the need to revisit the rules and to eliminate any potential ambiguity:

**§ 310.2(c).** Billing information means any data that provides access to a consumer’s or donor’s account, including, but not limited to, ~~such as~~ a credit card, checking, savings, share or similar account, utility bill, mortgage loan account or debit card.

2. “Outbound Telephone Call”

The Commission identified a common telemarketing practice of “up-selling,” which involves the offer of “additional items for purchase after the completion of an initial sale.” NOPR at 12. The Commission’s analysis concerning this issue is accurate.

The Commission stated:

[w]hen the consumer is unaware that the seller or telemarketer already has his or her billing information, or that this billing information will be used to process a charge for goods or services offered in a “up-sell,”

the most fundamental tool consumers have for controlling commercial transactions – i.e., withholding the information necessary to effect payment unless and until they have consented to buy -- is ceded, without the consumers' knowledge, to the seller before the sales pitch ever begins.

Id.

To combat this abusive practice, the Commission proposes modifying the definition of “outbound telephone call.” Telemarketing Sales Rule, 67 Fed. Reg. at 4491, 4541. The effect of this modification is to trigger in the solicitation of additional items the same disclosures that are required in the initial solicitation. LSAP supports the Commission's expansion of the rule to clarify that it covers the transfer of a consumer from one telemarketer soliciting a purchase or a donation to a different telemarketing soliciting a different purchase or transaction.

## **B. Deceptive Telemarketing Acts or Practices**

### 1. Disclosure of Total Costs

The Commission recognizes that “it is possible to state the cost of an installment contract in such a way that, although literally true, obfuscates the actual amount that the consumer is being asked to pay.” NOPR at 30. Despite this recognition, the Commission insists that “in disclosing total costs it is sufficient for a seller or telemarketer to disclose [only] the total number of installment payments and the amount of each payment.” Id. (emphasis added.) The Commission relies on the TSR's requirement that disclosures must be made in “a clear and conspicuous manner” to sufficiently protect consumers. 16 C.F.R. § 3103(a)(1). The Commission rejects the recommendation of some commenters, including the National Association of Attorneys General (NAAG), that the rule be

clarified to require that the total cost of an installment contract, not just the amount and number of the installment payments, be disclosed.

LSAP urges the Commission to reconsider its decision on this issue. The Commission's own website lists this deceptive practice first in its warnings against magazine subscription fraud.<sup>8</sup> According to the National Fraud Information Center, magazine subscription fraud was among the top five frauds in 2001 and telemarketers made more than half of the contacts.<sup>9</sup> The Better Business Bureau reports that it "receives thousands of complaints each year from consumers who have unknowingly purchased multiyear magazine subscriptions."<sup>10</sup>

Moreover, it is illogical to maintain a provision that demands a subjective determination of whether or not a disclosure meets a "clear and conspicuous" standard when an objective and unambiguous standard can be adopted. There would be no additional burden on sellers because it would be just as easy to state the sum total of all installment payments as it would to state both the amount and number of installments; in fact, it would be simpler and more direct. More importantly, it would remove the possibility of deception and obfuscation the Commission admits is possible and law enforcement and consumer advocacy groups testify is prevalent.

LSAP proposes that the Commission adopt NAAG's recommendation and amend the § 310(a)(1)(i) as follows:

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<sup>8</sup> Federal Trade Commission, "Magazine Subscription Scams"; <http://www.ftc.gov/bcp/online/pubs/markg/magzn.htm>; accessed March 24, 2002.

<sup>9</sup> National Fraud Information Center, "Telemarketing Fraud Statistics," <http://www.fraud.org/telemarketing/01statsfinal.htm>; accessed March 24, 2002.

<sup>10</sup> Better Business Bureau, "Magazine Subscription Solicitations," <http://www.bbb.org/library/magazine.asp>; accessed March 24, 2002.

**§ 310.3(a)(1)** Before a customer pays for goods or services offered, failing to disclose truthfully, in a clear and conspicuous manner, the following material information:

- (i) The total costs to purchase, receive, or use, and quantity of, any goods or services that are subject to the sales offer. In sales involving monthly installments, the total cost to be disclosed is the total cost of the entire contract, not just the installment.

2. Disclosures Regarding Prize Promotions

The Commission proposes to modify the TSR to require disclosure that making a purchase will not improve a participant's chances of winning a prize. Telemarketing Sales Rule, 67 Fed. Reg. at 4491, 4541. LSAP supports the Commission's proposal and agrees "this disclosure will ensure that consumers are not deceived." NOPR at 31.

3. Disclosures in the Sale of Credit Card Protections

The Commission notes that the practice of selling "worthless credit card loss protection" has increased in the past several years, that this scheme "disproportionately affected older consumers," and that "both the Commission and the State Attorneys General have devoted major resources to bringing cases that challenge the deceptive marketing of credit card loss protection plans." NOPR at 32-33. As the NOPR explains, under 15 U.S.C. § 1643, liability for goods or services charged on a stolen or lost credit card is limited to \$50. NOPR at 33.

LSAP agrees with the Commission's assertion that "consumers need disclosure information about existing credit card protections afforded by federal law." *Id.* To address this need, the Commission proposes to amend the TSR to make it a deceptive practice to fail to disclose, in the selling of credit card protection, the liability limits

currently available to consumers. Telemarketing Sales Rule, 67 Fed. Reg. at 4491, 4541. LSAP strongly supports this amendment.

4. Prohibited Misrepresentations in the Sale of Goods and Services

The Commission also proposes to make it a deceptive practice to misrepresent that any customer needs offered goods or services to provide protections the customer already has under 15 U.S.C. § 1643. Telemarketing Sales Rule, 67 Fed. Reg. at 4491, 4542. LSAP strongly supports this amendment.

5. Express Verifiable Authorization

The Commission proposes to make it a deceptive practice to submit billing information for payment without the customer's express verifiable authorization. Id. However, the Commission would restrict this protection to only those transactions that are not covered by the Fair Credit Billing Act (FCBA) and the Truth in Lending Act (TILA). LSAP supports the extension of the rule to cover billing information, but urges the Commission to extend protections to cover all transactions, regardless of the payment method. For a number of reasons, consumers using credit and debit cards should have the same protections as consumers using other forms of payment.

First, the harm that will accrue to telemarketing victims left unprotected due to the restriction is substantial while the burden on telemarketers to implement the proposed amendment universally is no greater than to implement it for only a distinct subset of consumers.

Second, the purported protections offered by FCBA place an unfair and unnecessary burden on consumers. Under FCBA, a consumer with a billing dispute must, within 60 days after the first bill containing the error was mailed, write to the creditor (at the address given for “billing inquiries,” not the address for sending payments). 15 U.S.C. § 1666 (1974). The creditor must acknowledge the complaint within 30 days after receiving it and must resolve the matter within the earlier of two billing cycles or 90 days. Id. Thus, the mistake (or in these cases, fraud) must already have occurred. Further, the consumer must carry the burden to take an affirmative action and follow potentially confusing procedures (i.e., writing to a different address than where one sends payment), which are typically found in exceedingly small print on the back of bills or in customer rights and responsibilities brochures. In addition, the consumer must wait for the perpetrator of the fraud to correct the error.

Third, and most persuasive, this cumbersome process is entirely avoidable simply by requiring express verifiable authorization for users of credit and debit cards as well as for those using other forms of payment. Verification requires no additional effort on the part of telemarketers. It is illogical to shift the burden and frustration of accessing time-consuming dispute resolution procedures onto a distinct yet significantly large subset consumers using credit and debit cards when it is no more burdensome on telemarketers to simply obtain express authorization to charge a credit or debit card.

Additional support for modifying the Commission’s rule to make it uniform comes from the National Fraud Information Center’s annual telemarketing fraud statistics. According to the center, half of payment methods used by consumers bilked

out of nearly \$4 billion in 2001 involved either debit or credit cards.<sup>11</sup> Further, older Americans are victimized at an alarming rate. More than one-third of the victims of telemarketing fraud in 2001 were senior citizens.<sup>12</sup>

In sum, the Commission should remove the limitations of this protection and extend the requirement of express verifiable authorization to all transactions. All consumers, and especially those who are victimized by unscrupulous telemarketers perpetrating fraud and abuse, deserve equal treatment.

### **C. Abusive Telemarketing Acts or Practices**

#### **1. Preacquired Account Telemarketing**

As noted by the Commission, LSAP and others called for various ways to address the problem of telemarketers' use of preacquired account numbers. NOPR at 57-61. LSAP appreciates the seriousness with which the Commission has taken these concerns. LSAP agrees with the Commission's conclusion that "the sharing of consumers' preacquired billing information causes or is likely to cause substantial injury to consumers which is not reasonably avoidable by consumers themselves and not outweighed by countervailing benefits to consumers or to competition." NOPR at 61. LSAP strongly supports the Commission's proposed solution: the ban against sellers or telemarketers receiving billing information from any person other than the consumer or disclosing billing information to any person for use in telemarketing. Telemarketing Sales Rule, 67 Fed. Reg. at 4491, 4543.

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<sup>11</sup> National Fraud Information Center, "Telemarketing Fraud Statistics."

<sup>12</sup> Id.

2. National Do Not Call Registry

LSAP strongly supports the Commission’s proposal to establish a national “do-not-call” registry. This proposal adequately balances the rights and needs of consumers with the rights of telemarketing businesses. This proposal has a firm legal grounding.

a. **The Government May Legislate Privacy Protections**

It is true that “[c]ommercial speech protection under the First Amendment has been a contentious issue.” Rita Marie Cain, *Call Up Someone and Just Say ‘Buy’ – Telemarketing and the Regulatory Environment*, 31 Am. Bus. L.J. 641, 663 (1994). Nonetheless, where the rights of privacy and commerce have come into conflict, American courts have favored privacy protection.

In Carey v. Brown, 447 U.S. 455 (1980), the United States Supreme Court stated that “the State’s interest in protecting the well-being, tranquility, and privacy of the home is of the highest order.” Carey v. Brown, 447 U.S. 455, 456 (1980) (holding that an Illinois picketing statute violated the Equal Protection Clause). In Frisby v. Schultz, 487 U.S. 474 (1988), the Court found that “a special benefit of the privacy all citizens enjoy within their own walls, which the State may legislate to protect, is an ability to avoid intrusions. Thus, we have repeatedly held that individuals are not required to welcome unwanted speech into their own homes and that the government may protect this freedom.” Frisby v. Schultz, 487 U.S. 474, 484-85 (1988) (holding that a municipal ordinance prohibiting picketing about someone’s residence serves the significant government interest of protecting residential privacy, and thus does not violate First Amendment).

**b. Telemarketing Presents a Threat to Privacy**

Regarding telemarketing specifically, in Moser v. F.C.C., the court held that based upon the “extensive” hearings it held with respect to the Telephone Consumer Protection Act, Congress “concluded that telemarketing calls to homes constituted an unwarranted intrusion upon privacy.” Moser v. F.C.C., 46 F.3d 970, 972 (9<sup>th</sup> Cir. 1995), cert. denied, 515 U.S. 1661 (1995)(telemarketing association unsuccessfully challenged the constitutionality of a provision in the Telephone Consumer Protection Act banning prerecorded telephone calls). Similarly, in National Funeral Services, Inc. v. Rockefeller, 870 F.2d 136 (9<sup>th</sup> Cir. 1989), the court found that telemarketing “presents a...threat of overreaching or undue influence [and] poses a very real threat to the privacy of a consumer’s home.” National Funeral Services, Inc. v. Rockefeller, 870 F.2d 136, 144 (9<sup>th</sup> Cir. 1989) (West Virginia statutes regulating the sale of preneed funeral contracts did not violate provider's free speech rights).

**c. The Right to Privacy May Outweigh the Right to Commercial Speech**

In a particularly analogous case, mail order houses challenged a federal law allowing consumers to remove their names from mailing lists and stop all future mailings. Here, the United States Supreme Court, in “weighing the highly important right to communicate...against the very basic right to be free from sights, sounds, and tangible matter we do not want [found that] the right to communicate must stop at the mailbox of an unreceptive addressee.” Rowan v. U.S. Post Office Dept., 397 U.S. 728, 735-37 (1970). With respect to the TSR, it similarly might be said that the right to commercial communications must stop at the telephone of the unwanted subscriber.

The Rowan court went on to declare that “[w]e...categorically reject the argument that a vendor has a right under the Constitution or otherwise to send unwanted material into the home of another. If this prohibition operates to impede the flow of even valid ideas, the answer is that no one has a right to press even ‘good’ ideas on an unwilling recipient.” Id. at 738. Therefore, in balancing vendor rights with consumer rights, the right not to receive unwanted telephone solicitations appears to outweigh the rights of telemarketers to ply their trade within the confines of a consumer’s home.

d. **The “Do-Not-Call” Registry Provides Important Consumer Protection**

The “do-not-call” registry provides an important consumer protection. As the previous discussion underlines, consumers are entitled to protection against unwanted intrusions and marketers. While such marketers have commercial free speech protections, these do not trump a consumer’s right to privacy. Moreover, consumers who place themselves on the central registry are, in so doing, declaring themselves to be unlikely to succumb to telemarketing entreaties or have an interest in purchasing the wares telemarketers are selling. Thus, it appears that the central registry not only provides protection for the consumer, but also likely increases telemarketing productivity by allowing telemarketers to more accurately address their pitches to willing subjects. As one analyst commented, by industry members working with consumers and regulators, “telemarketers will not waste resources delivering unwelcome messages and only consumers who want to receive these commercial calls will.” Cain, supra, at 664.

e. **A Central “Do-Not-Call” Registry Does Not Conflict with State Registries**

The establishment of a central “do-not-call” registry does not conflict, and is in fact compatible and complementary, with state “do-not-call” registries. First, a central registry would cover interstate, but not intrastate calls. Therefore, without a state registry, in-state telemarketers would not be prevented from making unwanted telemarketing calls to consumers. Although consumers may notify telemarketers individually that they do not want to be contacted, the Commission has noted the myriad shortcomings of this system. NOPR at 74.

Second, additional enforcement is available at the state level through attorneys general and executive branch regulatory agencies. With the addition of state “do-not-call” registries, additional enforcement authorities and resources are brought to bear in service of consumer protection.

Third, state registries may work in concert with the central registry. For example, the Minnesota Legislature is currently considering proposed “do-not-call” legislation. The proposed legislation provides that, if the “Commission establishes a single national list of telephone numbers of subscribers who object to receiving telephone solicitations, the [state] commissioner [of commerce] shall include subscribers who live in Minnesota and are included in the national list in the list established under [by state law].” H.F. 2710, 2002 Session, 82nd Leg. (Minn. 1999).

f. **A Telephone Number Should Remain on the Registry Until Reassigned**

LSAP recommends that the Commission require that a telephone number should remain on the central registry until the subscriber or a new subscriber expressly indicates otherwise. The local telephone companies should be required to inform new

subscribers that obtain reassigned numbers that unless they notify the Commission their numbers will continue to remain on the central registry.<sup>13</sup>

g. **Permission for Placement Should Be Granted Only by Account Holders**

Only account holders (i.e., the person(s) in whose name(s) the account is listed) should be allowed to place their number on the central registry. This approach is consistent with the theory, to which LSAP subscribes, that only those in whose name(s) the account is listed should be obligated for payment.

3. Definition of “Promptly”

The Commission declined, as LSAP and others suggested, to define in section 310.4(d) of the rule the term “promptly.” LSAP respectfully urges the commission to reconsider its decision.

The Commission explains that “its discussion of this term in the Statement of Basis and Purpose of the Rule is absolutely clear that...disclosures must occur at once or without delay, and before any substantive information about a prize, product, or service is conveyed to the consumer.” NOPR at 95. (emphasis in original). The Commission opined that the suggestions of commenters did not “provide any greater precision than does the current wording.” Id.

LSAP continues to disagree. LSAP believes that, although the discussion in the Statement of Basis and Purpose of the Rule, referenced in the NOPR, is helpful, there is

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<sup>13</sup> Local telephone companies should also be required to notify new subscribers whose numbers are not currently on the central registry of the procedures to place their numbers on the registry. While this may be administratively burdensome, because local telephone companies are regulated not by a federal agency but by state public utilities commissions, the Federal Communications Commission and the National Association of Regulatory Utility Commissioners should collaborate to develop mechanisms for accomplishing appropriate notifications should the Commission establish a central registry.

no good reason why the Commission should not, directly in rule, be explicit that “promptly” means “at the outset of the call.” Including such verbiage would eliminate any doubt concerning the meaning of “promptly.” Further, while lawyers would likely look to the Statement, business operators and certainly consumers would be less likely, if at all likely, to know to turn to that source for guidance.

### **Conclusion**

The Commission has demonstrated the need for additional protections under the TSR. The Commission’s proposals appropriately balance consumer protection and the need be judicious in imposing burdens on industry. LSAP generally supports the Commission’s proposals. Further, LSAP urges the Commission to consider its specific comments and adopt its recommendations.

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