



Wells Fargo & Company
420 Montgomery Street
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Federal Trade Commission/Office of the Secretary
Room H-159 (Annex K)
600 Pennsylvania Avenue, NW
Washington, DC 20580

Submitted Via Electronic Filing to <https://secure.commentworks.com/ftc-tsr>

Re: TSR Prerecorded Call Prohibition and Call Abandonment Standard Modification,
Project No. R411001

Dear Sirs and Madams:

This letter is submitted on behalf of Wells Fargo & Company and its affiliates (“Wells Fargo”) in response to the Federal Trade Commission’s (“Commission”) proposed amendment to the Telemarketing Sales Rule (“TSR”) to bar prerecorded telemarketing messages, including to consumers with whom an entity has an existing business relationship, when the call is answered by a person and the consumer has not consented in writing to such messages. Wells Fargo appreciates the opportunity to comment.

The Commission has implicitly acknowledged that it lacks jurisdiction over certain entities,¹ but has intimated that, if the proposed amendment is adopted, the Commission will enforce the new rule over vendors working for such entities.² In other words, an entity as to whom the Commission lacks jurisdiction could continue to deliver prerecorded telemarketing messages to existing customers, but the Commission would attempt to enforce the proposed amendment over vendors engaging in the same exact conduct on behalf of the exempt entity.

Wells Fargo urges the Commission to modify this suggestion. Such enforcement actions against telemarketers working on behalf of exempt entities would extend the Commission’s enforcement jurisdiction to entities over which it lacks statutory authority. When a telemarketing firm acts entirely at the direction of a company that is not subject to the Commission’s jurisdiction, the legality of its actions should be assessed according

¹ See, e.g., 71 Fed. Reg. 58724-58725.

² See, e.g., 71 Fed. Reg. 58727, 58731.

to the legal rights and obligations of its principal. The Commission should not indirectly exercise jurisdiction that it lacks the statutory authority to exercise directly.

To avoid jurisdictional confusion and the imposition of needless inefficiency on firms that engage in lawful telemarketing, the proposed amendments to the TSR should include language confirming that the regulation is not violated by a telemarketing firm that acts on behalf of an entity not subject to the Commission's jurisdiction. In the alternative, the Commission should confirm that, as a matter of enforcement discretion, it will not bring enforcement actions against a telemarketer who delivers prerecorded telemarketing messages to the principal entity's existing customers when that entity is not subject to the Commission's jurisdiction.

If you have any questions or would like to discuss any of the issues raised herein, please do not hesitate to contact me at (415) 222-5798 or amy.b.lovell@wellsfargo.com

Very truly yours,

/s/ AMY B. LOVELL

Amy B. Lovell
Senior Counsel