

[Billing Code 6750-01-S]

FEDERAL TRADE COMMISSION

16 CFR Part 310

[RIN 3084-AB19]

Telemarketing Sales Rule

AGENCY: Federal Trade Commission (“FTC” or “Commission”).

ACTION: Advance notice of proposed rulemaking; request for public comments.

SUMMARY: The Commission requests public comment on provisions of the FTC’s Telemarketing Sales Rule concerning caller identification services and disclosure of the identity of the seller or telemarketer responsible for telemarketing calls.

DATES: Written comments must be received on or before January 28, 2011.

ADDRESSES: Interested parties are invited to submit written comments electronically or in paper form, by following the instructions in the Request for Comment part of the

SUPPLEMENTARY INFORMATION section below. Comments in electronic form should be submitted at <https://ftcpublic.commentworks.com/ftc/tsrcalleridanprm>

(and following the instructions on the web-based form). Comments in paper form should be

mailed or delivered to the following address: Federal Trade Commission, Office of the

Secretary, Room H-113 (Annex Q), 600 Pennsylvania Avenue, NW, Washington, DC 20580, in the manner detailed in the Request for Comment part of the **SUPPLEMENTARY**

INFORMATION section below.

FOR FURTHER INFORMATION CONTACT: Michael Tankersley, (202) 326-2991, Attorney, Division of Marketing Practices, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580.

SUPPLEMENTARY INFORMATION:

Summary

When the Commission amended the Telemarketing Sales Rule (“TSR” or “Rule”) in 2003, it added a requirement that telemarketers transmit identifying information to caller identification (“Caller ID”) services.¹ Most companies that offer basic telephone service also offer services that will display to the recipient of the call the telephone number and name for the calling party. Traditional Caller ID services rely upon telecommunications signals that allow the caller’s local telephone exchange to send a telephone number of the calling party, and a code that signals whether or not the caller wants its number to be blocked. Enhanced Caller ID services which, as the name implies, go beyond basic display of the calling party’s number use directories or databases to associate the calling party number with a name. Thus, the “Caller ID” information provided to consumers may include both a telephone number and name for the originator of an incoming call.

The use of Caller ID information, however, has changed with the growing availability of technologies that allow callers to alter the number that appears on the recipient’s Caller ID display. Many businesses now have access to technologies that allow them to transmit Caller ID numbers that are not associated with their geographical location, or that, when dialed, connect the caller to a voice mail service. Users of these technologies also have the ability to cause the recipient’s Caller ID equipment to display a telephone number that is not in service as the source of the call, or create the appearance that the call is coming from someone who is not affiliated

¹ 68 FR 4579, 4672 (2003) (codified at 16 CFR 310.4(a)(7)).

with the actual caller.² In addition, these advanced technologies also enable callers to control and manipulate the name information displayed by Caller ID services.³

The Commission solicits comments on whether changes should be made to the TSR to reflect the current use and capabilities of Caller ID technologies. In particular, the Commission is interested in whether the TSR should be amended to better achieve the objectives of the Caller ID provisions including to enable consumers and law enforcement to use Caller ID information to identify entities responsible for illegal telemarketing practices. The Commission also solicits comment on whether it should amend the TSR specifically to regulate services that misrepresent, conceal, or obscure the identity of telemarketers or sellers, or should expand the provisions of the TSR that require oral disclosure of the identity of the seller or charitable organization on whose behalf a call is being made to require additional or more specific disclosures.⁴

I. How Caller Identification Services Work

Caller identification services rely upon identifying information transmitted with the signaling codes that accompany a telephone transmission. Telephone calls on the public switch telephone network are routed to their destinations by means of a specialized protocol called “signaling system seven,” or “SS7.” SS7 includes a calling party number (“CPN”) that is intended to identify the telephone number of the caller, and a privacy code that indicates whether

² See S. Rept. 96, 111th Cong., 1st Sess. 1-2 (2009); Hearing before the House Subcomm. on Telecomm. and the Internet, Truth in Caller ID Act, 110th Cong., 1st Sess. Ser. No. 110-8, 9-10 (2007) (test. of Kris Monteith); H. Sengar, D. Wijesekera, S. Jojodia, Authentication and Integrity in Telecommunication Signaling Network, *Proceedings of the 12th IEEE Intern. Conf. and Workshops on the Eng. of Computer-Based Systems* (2005).

³ See Ed Norris and Harry Hetz, “Caller ID Integrity Attacks,” *The ISSA J.* 6 (Jan. 2004).

⁴ 16 CFR 310.4(d), (e).

access to this information should be restricted.⁵ Carriers using SS7 are generally required to transmit the CPN associated with an interstate call.⁶

The CPN is used in a number of services provided to consumers. If a consumer subscribes to a Caller ID service and has Caller ID-capable equipment, the telephone number identified as the source of the call will be displayed with the incoming call.⁷ Telephone service providers also use CPN to offer consumers call-return service. This feature provides call recipients who press *69 after receiving a telephone call either: (1) information regarding the last incoming call, and the option to dial the caller back, or (2) the ability to return the last incoming call.⁸ Consumers can also purchase services or equipment that selectively blocks incoming calls, or selectively forwards calls based on the CPN transmitted with a call.⁹

Enhanced Caller ID services provide additional information by associating the CPN with a caller name. The caller name is typically obtained by the call recipient's service provider sending a query to a centralized calling name ("CNAM") database or directory that associates telephone numbers with names of up to 15 characters. If the database returns an associated

⁵ 47 CFR 64.1600(c), (d) (2009).

⁶ 47 CFR 64.1601(a), (d).

⁷ Rules and Regulations Regarding Calling Number Identification Service – Caller ID, 10 FCC Rcd. 11700, 11705 ¶ 9 (1994) ("Second Report").

⁸ 68 FR at 44,166; Second Report, 10 FCC Rcd. at 11708-09 ¶ 21.

⁹ Telephone service providers also offer call trace or "customer-originated trace" services that enable a subscriber to initiate a trace of the last call received. The subscriber initiates the trace by disconnecting the call and dialing a code that prompts the service provider to capture information that may assist law enforcement in tracing the origin of the call. The call trace may involve the use of CPN and automatic number service information. *See* 47 CFR 64.1601(d)(4)(iii) (exempting legally authorized call tracing or trapping procedures from restrictions on CPN delivery); 47 CFR 64.1602(a)(3)(iv) (allowing disclosure of information from automatic number service or charge number service for the purpose of complying with applicable law or legal process).

name, the name, or both the name and the number, are displayed by the call recipient's equipment while the call is ringing, unless a privacy code indicates that access to the name is blocked.¹⁰ The name information may come directly from telephone carriers or from database compilers that are not carriers.¹¹

It is important to note that the CPN is not the same as the calling party's "charge number" or "automatic number identification" ("ANI").¹² ANI and its SS7-based equivalent, the charge number, refer to the delivery of the calling party's billing number for billing and routing purposes.¹³ Although the CPN and the ANI/charge number for a given call may be the same, the CPN and ANI/charge number may differ and often do differ in calls from business lines.¹⁴

The CPN and ANI/charge number are also subject to different regulatory restrictions. Federal Communications Commission ("FCC") regulations impose tighter restrictions on carriers' disclosure of the ANI or charge number on interstate calls than the disclosure of CPN. These regulations, with exceptions that are not applicable to consumers receiving telemarketing

¹⁰ Second Report, 10 FCC Rcd. at 11708, 11746; Powers, *Calling Name Delivery*, IEEE International Conference on Communications, 1908 (Chicago, IL, 1992); R. Robrock, II, "The Many Faces of the LIDB Database," *IEEE Intern. Conf. Comm.*, 1903, 1904 (Chicago, IL, 1992); see, e.g., Cisco Systems, Inc., *Calling Name Delivery (CNAM)* (2007), available at http://www.cisco.or.at/en/US/docs/voice_ip_comm/pgw/9/feature/module/9.7_3_/cnam.pdf.

¹¹ Telephony protocols other than SS7 may transmit caller name information directly from the originator of the call, without relying on a query to a separate database. See Session Initiation Protocol, ¶ 6.2 (Internet Working Group 1999), available at <http://www.ietf.org/rfc/rfc2543.txt> (describing optional "display-name" parameter in Internet telephony protocol).

¹² See Rules and Policies Regarding Caller Number Identification Service, 9 FCC Rcd. 1764, 1772-73 (1994) ("First Report"). ANI's original purpose was to enable carriers to bill customers for calls.

¹³ Rules and Regulations Implementing the Telephone Consumer Protection Act (TCPA) of 1991, 68 FR 44,144, 41,167 (2003).

¹⁴ Second Report, 10 FCC Rcd. at 11707 ¶ 17 & n.14.

calls, prohibit disclosure, reuse or sale of the telephone number or billing information without first notifying the originating telephone subscriber and obtaining affirmative consent of the subscriber for such reuse or sale.¹⁵ By contrast, privacy protection for the CPN depends upon a privacy indicator in the signaling protocol that allows the calling party to prevent the CPN from being revealed to the recipient of the call.¹⁶ FCC regulations protect the ability of calling parties to use this parameter to conceal CPN on a per-line or per-call basis. If the party originating a call has requested that the CPN not be transmitted, these regulations prohibit carriers from revealing the calling party's name or number, and prohibit carriers from allowing the called party to automatically return the call.¹⁷

II. Current Requirements Concerning Caller Identification

As amended in January 2003, the TSR provides that it is an abusive telemarketing act or practice for any seller or telemarketer to engage in “[f]ailing to transmit or cause to be transmitted the telephone number, and, when made available by the telemarketer’s carrier, the name of the telemarketer, to any Caller ID service in use by a recipient of a telemarketing call.”¹⁸

¹⁵ 47 CFR 64.1602.

¹⁶ 47 CFR 64.1601(b).

¹⁷ Second Report, 10 FCC Rcd. at 11705 ¶ 10. These regulations require that carriers recognize *67 as a request for privacy when CPN would otherwise be transmitted to the recipient of the call. Dialing *67 before placing a call, referred to as “per call blocking,” allows subscribers to block their numbers from transmission to the public switched network. Telephone service providers may also block the transmission of CPN for particular lines, and carriers must recognize *82 as a request by the caller that the CPN be transmitted on an otherwise blocked line. See 47 CFR 64.1601(b); *Rules and Policies Regarding Calling Number Identification Service – Caller ID*, Third Report and Order, Memorandum Opinion and Order on Further Reconsideration, and Memorandum Opinion and Order on Reconsideration, FCC 97-103, CC Docket No. 91-281, 12 FCC Rcd 3867, 3870 (1997); Second Report, 10 FCC Rcd. at 11719, 11728-34.

¹⁸ 16 CFR 310.4(a)(7).

The Rule also permits the substitution of “the name of the seller or charitable organization on behalf of which a telemarketing call is placed, and the seller’s or charitable organization’s customer or donor service telephone number, which is answered during regular business hours.”¹⁹ “Caller identification service” is defined as “a service that allows a telephone subscriber to have the telephone number, and, where available, name of the calling party transmitted contemporaneously with the telephone call, and displayed on a device in or connected to the subscriber’s telephone.”²⁰

In the Statement of Basis and Purpose adopting the TSR, the Commission explained that requiring telemarketers to transmit information used by Caller ID services has three benefits. First, requiring the transmission of Caller ID information promotes consumers’ privacy by allowing them to screen out unwanted calls and identify companies that have contacted them so that they can place “do-not-call” requests to those companies.²¹ Indeed, many consumers subscribe to Caller ID to identify incoming calls from telemarketers and screen out unwanted telemarketing calls.²²

Second, eliminating anonymity in telemarketing benefits both consumers and industry by promoting increased accountability.²³ Caller ID information provides a record of identification that is available to the consumer after the telemarketing call is complete. Without such a record,

¹⁹ *Id.*

²⁰ 16 CFR 310.2(d).

²¹ 68 FR at 4624, 4626.

²² *Id.* at 4626 n.534.

²³ *Id.* at 4627 (citing statement of commenter DialAmerica that, “[d]elivery of Caller ID information, that will be displayed on a consumer’s Caller ID device or that can be accessed through such services as *69, is essential to create accountability in the outbound telemarketing industry.”).

consumers who have received unlawful telemarketing calls – such as abandoned calls or prerecorded solicitations – find it difficult, if not impossible, to ascribe these calls to a particular telemarketer.²⁴ Accurate Caller ID information increases the ability of consumers to distinguish between businesses that are responsible for deceptive and abusive telemarketing, and businesses that adopt effective measures to prevent such calls.

Finally, requiring the transmission of Caller ID information by telemarketers benefits law enforcement. The transmission of telemarketers' Caller ID information should help identify sellers and telemarketers that fail to honor “do-not-call” requests by consumers or abandon calls, and reduce fraud before it occurs by enabling consumers to contact government agencies or the Better Business Bureau to verify the legitimacy of a telemarketer or seller.²⁵

In July 2003, six months after the Commission adopted these requirements in the TSR, the FCC adopted regulations pursuant to the Telephone Communications Privacy Act (“TCPA”), 47 U.S.C. 227, that provide that any person or entity who engages in telemarketing must transmit

²⁴ *Id.*

²⁵ *Id.* In adopting its regulations concerning Caller ID information, the FCC also noted that benefits of transmitting Caller ID information are not limited to consumers who subscribe to caller ID services:

Consumers can also use the *69 feature to obtain caller ID information transmitted by a telemarketer. The *69 feature, available through many subscribers' telephone service providers, provides either: (1) Information regarding the last incoming call, and the option to dial the caller back, or (2) the ability to return the last incoming call. Call information, however, would not be available for an incoming call, if the caller failed to transmit caller ID information or blocked such information. Caller ID also should increase accountability and provide an important resource for the FCC and FTC in pursuing enforcement actions against TCPA and TSR violators.

68 FR at 44166.

“caller identification information.”²⁶ The text of the FCC regulations is not identical, but is substantially similar to 16 CFR 310.4(a)(7). The FCC regulations specify that “caller identification information must include either CPN or ANI, and, when made available by the telemarketer’s carrier, the name of the telemarketer.”²⁷ Like the TSR, the FCC’s regulations also allow the person or entity making the call to fulfill this obligation by transmitting the “name of the seller on behalf of which the telemarketing call is placed and the seller’s customer service telephone number.” *Id.* Furthermore, “the telephone number so provided must permit any individual to make a do-not-call request during regular business hours.” *Id.* Although the FCC’s regulations generally permit a caller to protect its anonymity by blocking Caller ID information, Section 64.1601(e)(2) unequivocally prohibits telemarketers from blocking the transmission of such information. In adopting these requirements, the FCC explained:

Consistent with the FTC’s rules, CPN can include any number associated with the telemarketer or party on whose behalf the call is made, that allows the consumer to identify the caller. This includes a number assigned to the telemarketer by its carrier, the specific number from which a sales representative placed a call, the number for the party on whose behalf the telemarketer is making the call, or the seller’s customer service number.

68 FR at 44167.

Many states have also adopted laws aimed at prohibiting the transmission of deceptive Caller ID information or requiring telemarketers to transmit specified information. These state requirements include recently adopted statutes that specifically prohibit the use of computers or

²⁶ See 68 FR 44,144, 44,179 (2003) (codified at 47 CFR 64.1601(e)).

²⁷ 47 CFR 64.1601(e)(i); see also 47 CFR 64.1600(c) (defining CPN); *id.* 64.1600(b) (defining ANI).

Internet telephone equipment to insert false information into Caller ID systems.²⁸ While most state statutes simply prohibit blocking or interfering with Caller ID services, several state laws impose obligations on telemarketers to transmit specific information, such as codes that identify the name of the telemarketer, or a telephone number at which consumers can contact personnel of the entity responsible for the telephone call.²⁹

Independent of the Caller ID provisions of the TSR, the Rule also requires that telemarketers orally disclose the seller and purpose of the call. Specifically, the TSR mandates that “a telemarketer in an outbound telephone call or internal or external upsell to induce the purchase of goods or services” disclose truthfully, promptly, and in a clear and conspicuous manner: (1) the identity of the seller; (2) that the purpose of the call is to sell goods or services; and (3) the nature of the goods or services.³⁰ In a call to solicit charitable solicitations, the

²⁸ *See, e.g.*, Anti-Caller ID Spoofing Act, La. Rev. Stat. tit. 51, ch.19-C; Ok. Stat. Ann. §§ 776.22, 776.23; Internet Caller Identification Act, Ill. Comp. Stat. § 517/10.

²⁹ *See* La. Rev. Stat. § 844.2.A.(1) (telemarketer must have identification code that will correctly identify the name of the telephone solicitor); Mont. Code Ann. § 30-14-1412 (telemarketer may substitute “name and number that accurately identify the entity causing the call to be made and a working telephone number at which the entity’s personnel can be contacted.”); N.H. Rev. Stat. § 359-E:5-a (telemarketer may not prevent “caller identification information for telephone solicitor’s lines used to make telephone calls” from being shown by caller identification device); Tex. Bus. & Comm. Code Ann. § 304.151(b)(2) (telemarketer may not fail to provide caller identification information in a manner that is accessible by a caller identification service if the telemarketer is capable of providing the information in that manner); Ill. Comp. Stat. Ann. § 413/15(c) (live operator soliciting sale of goods or services may not impede display of “the solicitor’s telephone number”); 2010 Tenn. Pub. Acts, Ch. 684 (requiring that automatic dial announcing devices display the number utilized by the dialing equipment, unless the device displays a telephone number that has an area code within the state or a toll-free number that is answered during regular business hours and the name of the person is displayed along with the telephone number).

³⁰ 16 CFR 310.4(d)(1)-(3); *see also* 15 U.S.C. 6102(3)(C) (statute directs Commission to adopt rules that include “a requirement that any person engaged in telemarketing for the sale of goods or services shall promptly and clearly disclose to the person receiving the call that the purpose of the call is to sell goods or services and make such other disclosures as the Commission deems appropriate, including the nature and price of the goods and services.”).

telemarketer must similarly disclose the charitable organization on behalf of which the request is being made, and the purpose of the telephone call.³¹

When the Commission adopted these provisions in 2003, it rejected proposals that it add the telephone number of the seller or charitable organization to this list of introductory oral disclosures, in part, because it believed that the requirement to transmit Caller ID information would help mitigate the problems identified by those who advocated requiring oral disclosure of the seller's telephone number at the outset of an outbound telephone call.³² By contrast, while FCC regulations adopted pursuant to the Telephone Communications Privacy Act also require that a person making a telemarketing call disclose "the name of the person or entity on whose behalf the call is being made," they further require disclosure of "a telephone number or address at which the person or entity may be contacted."³³

The Commission also has addressed the manipulation of Caller ID information in the context of debt collection. The Federal Debt Collection Practices Act provides that debt

If a prize promotion is offered, the telemarketer must also disclose that no purchase or payment is necessary to be able to win a prize or participate in a prize promotion and that any purchase or payment will not increase the person's chances of winning. 16 CFR 310.4(d)(4). FCC regulations also require verbal disclosure of the identity of the caller in addition to the transmission of Caller ID information. *See* 47 CFR 64.1200(e)(iv); 68 FR at 44167 ("Provision of Caller ID information does not obviate the requirement for a caller to verbally supply identification information during a call.").

³¹ 16 CFR 310.4(e); *see also* 15 U.S.C. 6102(3)(D) (statute directs Commission to adopt rules that include "a requirement that any person engaged in telemarketing for the solicitation of charitable contributions, donations, or gifts of money or any other thing of value, shall promptly and clearly disclose to the person receiving the call that the purpose of the call is to solicit charitable contributions, donations, or gifts, and make such other disclosures as the Commission considers appropriate, including the name and mailing address of the charitable organization on behalf of which the solicitation is made.").

³² 68 FR at 4648.

³³ 47 CFR 64.1200(d)(4).

collectors may not, in connection with the collection of a debt, place telephone calls “without meaningful disclosure of the caller’s identity.”³⁴ Courts have affirmed that this obligation applies to the information transmitted to Caller ID services when a debt collector places such calls.³⁵ In 2008, the Commission charged that a debt collector violated this provision of the statute by making collection calls that did not display the debt collector’s name, and manipulating the calling party number so that it would display a telephone number with the borrower’s local area code.³⁶

III. Caller Identification Spoofing and Abuse

Current telecommunications technologies make it possible for telemarketers to select the numbers that are transmitted to Caller ID services. Telemarketers also can make arrangements to control the calling names in databases used by Caller ID services. These technologies can be used to serve legitimate interests of telemarketers, sellers, and charitable organizations in altering the caller number and name displayed by Caller ID services.³⁷

The increasingly common manipulation of Caller ID information, however, also has undermined the ability of consumers and law enforcement to identify the entities responsible for

³⁴ 15 U.S.C. 1692d(6).

³⁵ *Knoll v. Allied Interstate, Inc.*, 502 F. Supp. 2d 943, 946 (D. Minn. 2007) (allegation that debt collector arranged for false caller name “Jennifer Smith” to be displayed on caller identification device stated a claim for violation of 15 U.S.C. 1692d(6)).

³⁶ *FTC v. EMC Mortgage Comp.*, C.A. No. 4:08-cv-338, Complaint (E.D. Tex. Sept. 9, 2008). The defendants, EMC Mortgage Corporation and The Bear Stearns Companies LLC, agreed to the entry of a stipulated judgment that settled this claim and other claims in the complaint without admission or adjudication of liability. *Id.*, Stipulated Final Judgment and Order (filed Sept. 9, 2008).

³⁷ H. Rep. 461, Truth in Caller ID Act of 2010, 111th Cong., 2d Sess. 7 (2010) (describing legitimate reasons for manipulation of Caller ID information in business and non-business calls).

illegal telemarketing practices.³⁸ When telemarketers that make improper robocalls or repeatedly call persons who have made do-not-call requests use “spoofed” calling party numbers, consumers cannot identify the source of the calls and, therefore, cannot take effective action to stop them. Moreover, false or misleading Caller ID information frustrates law enforcement investigations seeking to hold telemarketers responsible for illegal conduct, and harms the reputation of telemarketers and sellers who are not responsible for the unlawful telephone calls.

In addition to allowing telemarketers to “spooF” the names and numbers transmitted to Caller ID services, these technologies also have been used to manipulate Caller ID in other ways that frustrate the purpose of the TSR’s requirements regarding Caller ID. For example, telemarketers have transmitted calling party numbers that are valid telephone numbers but have only an attenuated connection to the telemarketer or seller and cannot readily be used by

³⁸ For example, the Commission has received tens of thousands of complaints concerning telemarketing calls to telephone numbers listed on the National Do Not Call Registry for which the calling numbers transmitted with calls are not valid telephone numbers but, rather, a string of digits that does not correspond to any operating telephone number (*e.g.*, 000-000-0000). Commission enforcement actions also have uncovered evidence that telemarketers engaged in abusive and deceptive practices have transmitted valid telephone numbers that are not associated with the telemarketer or seller responsible for the calls. Since 2005, the Commission has brought or referred to the Department of Justice ten enforcement actions that included charges that a telemarketer had violated the TSR by failing to transmit appropriate caller identification information. *See United States v. Srikanth Venkataraman*, Civ. No. 3:06-cv-01928-MLC-JJH (D. N.J. filed Apr. 26, 2006); *United States v. Civic Development Group, LLC*, Civ. No. 2:07-cv-04593-FSH-PS (D.N.J. filed Sept. 25, 2007); *United States v. Global Mortgage Funding, Inc.*, Civ. No. 8:07-cv-1275 (C.D. Cal. filed Oct. 30, 2007); *United States v. Guardian Communications, Inc.*, Civ. No. 4:07-cv-04070-MMM-JAG (C.D. Ill. filed Nov. 6, 2007); *FTC v. MCS Programs, LLC*, Civ. No. 09-cv-5380-RJB (W.D. Wash. filed June 25, 2009); *FTC v. JPM Accelerated Services, Inc.*, Civ. No. 6:09-CV-2021-ORL-28-KRS (M.D. Fla. filed Nov. 30, 2009); *FTC v. 2145183 Ontario, Inc.*, Civ. No. 1 09-CV-3307 (N.D. Ill. filed Nov. 30, 2009); *FTC v. Economic Relief Technologies, LLC*, Civ. No. 09C-7423 (N.D. Ga. filed Nov. 30, 2009); *FTC v. Transcontinental Warranty, Inc.*, Civ. No. 09CV2927 (N.D. Ill., filed May 13, 2009); *FTC v. Voice Touch, LLC*, Civ. No. 09CV2929 (N.D. Ill. filed May 13, 2009).

consumers to identify the source of a call.³⁹ The telephone numbers transmitted in telemarketing campaigns often are not associated with the telemarketer or the seller in any publicly available directory, or even in carrier databases that identify the subscriber to whom the telephone number is assigned.

Similarly, telemarketers have arranged for the transmission of caller name information that does not identify the telemarketer or seller by name, and provides consumers with only cryptic abbreviations or generic terms, such as “Warranty Alert,” that do not allow the consumer to identify the telemarketer or seller.⁴⁰ In another example, consumers who attempt to identify the entity responsible for a call by telephoning the telephone numbers transmitted to a Caller ID service have been unable to do so because their calls are not connected to a live representative of the telemarketer or seller. Instead, calls to the number displayed by the Caller ID service are answered by a recording that offers to accept a do-not-call request but does not identify the telemarketer or the seller that initiated the telephone call.

The Commission anticipates that the manipulation of Caller ID information may become more prevalent as advanced telecommunications and networking technologies become more ubiquitous and continue to develop. In the past, manipulating Caller ID information required special phone connections and expensive equipment. The barriers to manipulating Caller ID, however, have been reduced by advances in technology and the increasing availability of services such as Voice over Internet Protocol, or Internet protocol-enabled (“IP-enabled”) voice

³⁹ Complaint ¶ 17, *United States v. Srikanth Venkataraman (d/b/a/ Scorpio Systems)*, Civ. No. 3:06-cv-01928-MLC-JJH (D. N.J. filed Apr. 26, 2006) (defendant transmitted phony caller identification number 234-567-8923).

⁴⁰ *Arkansas v. SVM, Inc.*, Civ. No. 4:09-cv-00456-BSM (E.D. Ark. filed Dec. 22, 2009); see also Complaint ¶ 22, *United States v. Guardian Communications, Inc.*, Civ. No. 4:07-cv-04070-MMM-JAG, (C.D. Ill. filed Nov. 6, 2007) (defendant caused “Cust Service,” “Services, Inc.,” “Card Services,” “DWC,” or “LTR” to be transmitted as the name of the caller).

services. Moreover, telemarketers can obtain access to the telephone network through service providers who offer the ability to spoof Caller ID numbers or names.

At the same time, the Commission recognizes that advances in communications technologies may afford consumers more control over whether and how they receive telephone calls, including calls from telemarketers. Effective regulation of Caller ID may promote the development of technologies that increase consumers' ability to prevent or minimize the harms from abusive telemarketing practices.

IV. Request for Comment

The Commission requests comments on whether it is possible to amend the Caller ID provisions of the TSR to promote the delivery of more reliable or specific Caller ID information. The Commission seeks information on how Caller ID is being used by consumers and regulated parties, and how telemarketers and their service providers may use Caller ID technologies in ways that are benign or abusive. The Commission is particularly interested in information concerning recently introduced or soon to be introduced technologies that affect the ability of consumers and law enforcement to use Caller ID information. Commenters should provide detailed, factual information to support their observations or proposals.

The Commission solicits comments on the following specific questions:

(1) What services exist to assist consumers in identifying the source of deceptive or abusive calls in which the telemarketer does not truthfully disclose the name of the telemarketer, seller, or charitable organization at the outset of the call or abandons a call without identifying the source of the call? Are these services dependent on reliable transmission of CPN or equivalent information? How much does it cost consumers to use these services?

- (2) How widespread is consumer use of Caller ID services to screen unwanted calls? Do consumers use other services that rely on transmission of CPN, such as call-blocking equipment, to avoid or block unwelcome telemarketing calls?
- (3) Would changes to the TSR improve the ability of Caller ID services to accurately disclose to consumers the source of telemarketing calls, or improve the ability of service providers to block calls in which information on the source of the call is not available or has been spoofed? If so, what specific amendments should be made to the TSR?
- (4) Should the Commission amend the Caller ID provisions of the TSR to recognize or anticipate specific developments in telecommunications technologies relating to the transmission and use of Caller ID information? If so, what specific amendments should the Commission make?
- (5) What role do telephone service providers (including those that are not common carriers) play in providing services, equipment or software that allows telemarketers, sellers and charitable organizations to manipulate the caller number and name information in telemarketing calls? The TSR provides that it is a violation of the Rule for a person to provide substantial assistance or support to any seller or telemarketer when that person knows or consciously avoids knowing that the seller or telemarketer is engaged in any act or practice that violates enumerated provisions of the Rule. Is this provision adequate to regulate service providers that assist telemarketers and sellers in manipulating caller number and name information?
- (6) When the Commission adopted the Caller ID provisions of the TSR in 2003, it acknowledged the possibility that a small number of telemarketers may not have access to telecommunications systems capable of transmitting calling number information.⁴¹ Do all telemarketers now have

⁴¹ The Commission observed that “[a] very small number of telemarketers may be located in areas of the country that are served only by telephone companies that are not capable of transmitting Caller ID information or assigning a telephone number to the telemarketer that can be transmitted to a called consumer.” 68 FR at 4626. In July 2003, the FCC made similar

access to technology that allows them to transmit or arrange for the transmission of such information? Should the Commission amend the Caller ID provisions of the TSR to specify that telemarketers, sellers, and charitable organizations must use technology that causes the CPN to be transmitted with all telemarketing calls? Commenters should address whether there are currently areas that are served only by telephone companies that are not capable of transmitting Caller ID information or, more specifically, not capable of transmitting CPN. If services that transmit CPN are available to a telemarketer, is there any justification for giving such a telemarketer the option of using technology that does not transmit CPN, but transmits ANI or some other identifier? Specifically, is it more expensive to use a service that transmits CPN than one that does not? If so, how much more expensive?

(7) Should the Commission amend the Caller ID provisions of the TSR to require, without qualification, that telemarketers use technologies or subscribe to services that provide caller name identification to recipients who use enhanced Caller ID services? Are there any telemarketers that do not have access to services that cause caller name information to be transmitted to Caller ID services? What portion of consumers receive caller name information through Caller ID services? Would requiring telemarketers to use technologies or services that provide caller name information increase telemarketers' costs? If so, how much does it cost to use these technologies or services?

(8) Should the Commission amend the Caller ID provisions of the TSR to further harmonize the TSR with the regulations promulgated by the FCC pursuant to the TCPA? Have differences in

observations concerning the feasibility of telemarketers transmitting caller ID information and stated that a telemarketer could transmit ANI as an alternative to CPN. 68 FR at 44167.

the language in 16 CFR 310.4(a)(7) and 47 CFR 64.1601(e) caused problems in industry compliance?⁴²

(9) Should the Commission amend the Caller ID provisions of the TSR to further specify the characteristics of the telephone number transmitted to any Caller ID service? For example, should the TSR require that the telephone number transmitted be:

(a) a number that is listed in publicly available directories as the telephone number of the telemarketer, seller, or charitable organization?

(b) a number with an area code and prefix that are associated with the physical location or principal place of business of the telemarketer or the seller?⁴³

(c) a number that is answered by live representatives or automated services that identify the telemarketer, seller, or charitable organization by name?

(d) a number that provides for prompt and easy communication with the live representatives of the telemarketer, seller, or charitable organization?⁴⁴ or

⁴² In adopting 16 CFR 310.4(a)(7), the Commission observed that this regulation is not inconsistent with the FCC's regulations concerning Caller ID blocking to protect privacy because those regulations are designed to address specific calling situations where protecting the caller's anonymity is warranted, such as undercover law enforcement operations and calls placed from battered women's shelters. 68 FR at 4627. No such privacy justification applies to telemarketing calls. *Id.*; accord 68 FR at 44167 (FCC concludes that "the caller ID requirements for commercial telephone solicitation calls do not implicate the privacy concerns associated with blocking capability for individuals" and that it "has determined to prohibit any request by a telemarketer to block caller ID information or ANI."). The Commission does not anticipate proposing any changes to the TSR that would be inconsistent with the FCC regulations which, since 2004, have expressly prohibited any person or entity engaged in telemarketing, other than a tax-exempt nonprofit organization, from blocking the transmission of Caller ID information. 47 CFR 64.1601(e)(2).

⁴³ See North American Numbering Plan, Geographic NPAs In Service Sorted by Number, available at <http://www.nanpa.com/nas/public/npasInServiceByNumberReport.do?method=displayNpasInServiceByNumberReport>.

⁴⁴ Cf. Organization for Economic Cooperation and Development, Guidelines for Consumer Protection in the Context of Electronic Commerce, Part III.A (1999), available at

(e) a number that is the same as the telephone number that is listed in direct mail solicitations or other advertising (such as Internet or broadcast media) as the telephone number for the telemarketer, seller, or charitable organization?

(10) Should the Commission amend the Caller ID provisions of the TSR to permit a seller or telemarketer to use trade names or product names, rather than the actual name of the seller or telemarketer, in the caller name provided to Caller ID services? Should the Commission allow the use of acronyms or abbreviations? If so, are there circumstances in which the use of an acronym, abbreviation, trade name or product name should be prohibited?

(11) Do consumers benefit from provisions in the TSR that give calling parties the option of substituting the number and name of the seller or charitable organization for the number and name of the telemarketer? Should the Commission amend the Caller ID provisions of the TSR to require that the name provided to Caller ID services be the name of the seller or charitable organization on behalf of which a telemarketing call is placed? Should the Commission amend the TSR to allow telemarketers to cause Caller ID services to display the number of the telemarketer, but display the name of the seller?

(12) In general, what benefits has the Rule provided to consumers, telemarketers, sellers, and charitable organizations? What evidence supports the asserted benefits?

(13) Could the benefits that the Rule has provided to consumers, telemarketers, sellers, and charitable organizations be achieved through less burdensome or less restrictive means?

(14) In considering amendments to 16 CFR 310.4(a)(7), should the Commission also consider amendments to 16 CFR 310.4(d) and (e), which describe the oral disclosures that must be made

http://www.oecd.org/document/51/0,2340,en_2649_34267_1824435_1_1_1_1,00.html
(businesses engaged in electronic commerce should provide accurate, clear and easily accessible information about themselves sufficient to allow, at a minimum, “prompt, easy and effective consumer communication with the business”).

to identify the seller or charitable organization at the outset of an outbound telephone call or upsell?

Interested parties are invited to submit written comments electronically or in paper form. Comments should state “Advance Notice of Proposed Rulemaking Concerning Caller Identification, Matter P104405” both in the text and on the envelope. Please note that your comment including your name and your state will be placed on the public record of this proceeding, including on the publicly accessible FTC website, at <http://www.ftc.gov/os/publiccomments.shtm>.

Because comments will be made public, they should not include any sensitive personal information, such as an individual’s Social Security number; date of birth; driver’s license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. Comments also should not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, comments should not include any “[t]rade secret or any commercial or financial information which is obtained from any person and which is privileged or confidential,” as provided in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and Commission Rule 4.10(a)(2), 16 CFR 4.10(a)(2). Comments containing material for which confidential treatment is requested must be filed in paper form and clearly labeled “Confidential.”⁴⁵

Because mail delivered to the FTC by the United States Postal Service is subject to delay due to heightened security screening, please consider submitting your comments in electronic

⁴⁵ The comment must also be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission’s General Counsel, consistent with applicable law and the public interest. *See* Commission Rule 4.9(c), 16 CFR 4.9(c).

form. Comments filed in electronic form should be submitted by using the following weblink: <https://ftcpublic.commentworks.com/ftc/tsrcalleridanprm> (and following the instructions on the web-based form). To ensure that the Commission considers an electronic comment, you must file it on the web-based form at the weblink <https://ftcpublic.commentworks.com/ftc/tsrcalleridanprm>. If this Notice appears at <http://www.regulations.gov/search/index.jsp>, you may also file an electronic comment through that website. The Commission will consider all comments that regulations.gov forwards to it. You may also visit the FTC website at <http://www.ftc.gov> to read the Notice and the news release describing it.

A comment filed in paper form should reference the “Advance Notice of Proposed Rulemaking Concerning Caller Identification, Matter P104405” both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission/Office of the Secretary, Room H-113 (Annex Q), 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580. The FTC requests that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions.

The Federal Trade Commission Act (“FTC Act”) and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives, whether filed in paper or electronic form. Comments received will be available to the public on the FTC website, to the extent practicable, at <http://www.ftc.gov/os/publiccomments.shtm>. As a matter of discretion, the Commission makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments

on the FTC website. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at <http://www.ftc.gov/ftc/privacy.shtm>.

By direction of the Commission.

Donald S. Clark
Secretary.