

**BEFORE THE
FEDERAL TRADE COMMISSION
WASHINGTON, DC 20554**

Regarding: FTC File No. P104405

**COMMENTS ON ADVANCE NOTICE OF RULEMAKING CONCERNING
CALLER IDENTIFICATION**

SUBMITTED BY:

MDS COMMUNICATIONS

I. Introduction

The Federal Trade Commission has solicited comments on a Advanced Notice of Proposed Rulemaking regarding the Telemarketing Sale Rule (TSR) and its rules regarding Caller ID.

MDS Communications is a leading provider of call center solutions specializing in political, Christian and nonprofit fundraising. MDS Communication focuses on meeting the highest standards of quality and regulatory compliance. It has provided these services to some of the world's leading organizations for 19 years and employs nearly 250 employees working on behalf of more than 100 charities.

MDS Communications and its clients have spent millions of dollars designing and implementing dialing systems which comply with applicable laws, including Caller ID. The current rules provide multiple benefits to consumers including allowing people to screen out unwanted telemarketing calls, strengthening business best practices by making it impossible for companies to remain anonymous, and helping law enforcement by making it easier to identify abusive companies.

We have never received complaints from consumers, regulators or the FTC regarding our Caller ID transmission or practices, and believe the FTC should maintain its current flexible Rule allowing the charity to choose the telephone number projected (so long as it allows for a consumer "do-not-call" request) and whether to use its name or the name of its fundraiser in Caller ID. We regularly hear from consumers who want the charity's name shown on Caller ID- they know their favorite charity, but not necessarily MDS, and the latter name could sometimes convey little useful information.

The FTC has tools at its disposal to prevent and punish abuse, e.g. 16 C.F.R. 310.3(a)(4), and laws prohibiting unfair trade practices, and has done so with regard to Caller ID transmission. Transmission of false information is already illegal- MDS urges

the Commission to prosecute such use, but not to impose a more rigid scheme on compliant companies.

II. MDS Communication's Current Business Practices

MDS has provided telephone fundraising services to nonprofit organizations since its founding 19 years ago. MDS never possesses funds raised on behalf of its clients and has an unblemished record of compliance with state and federal fundraising laws.

Our clients include charities and nonprofits, large and small, and we believe that a flexible approach to Caller ID transmission rules best serves consumers and charities. We comply with the current TSR and will continue to do so, but urge the FTC to not impose rigid transmission rules which would be followed only by compliant companies like ours. If the FTC believes abusive or fraudulent Caller ID is a problem, it should enforce the current provisions of the Rule banning abusive or fraudulent practices, rather than impose new rules on compliant companies.

MDS and its clients do support change with regard to the name transmission rules. Name should be required, but the TSR should allow use of non-deceptive or abusive d/b/a's or trade names, which would help consumers who might not recognize the legal name of the caller if the caller commonly uses a trade name. Caller ID usually has few characters available for name transmission, and MDS therefore believes a d/b/a might be recognized more often by consumers than a legal name including "Inc." or other legal terms.

III. Response to 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?

RESPONSE: MDS confirms all donations during the call itself with a supervisor to ensure the donor understood the transaction. MDS sends a letter to the donor after the call containing the same information. These services are free to the donors, and do not depend on transmission of CPN.

MDS believes that legitimate fundraisers provide consumers similar protections. Caller ID supplements these tools, but any change to the Caller ID rules would not provide additional protections to consumers from fraud.

(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?

RESPONSE: Our employees report that consumers' use of Caller ID to screen calls is widespread. When consumers answer calls from our charity clients, they want to hear about the organization and its services. Consumers like Caller ID because they recognize the names of their favorite charities, and unwanted calls don't waste their time. More rigid rules, e.g. requiring transmission of our name (and not allowing a choice), would harm consumers, who might not quickly recognize the name of their favorite charity. This could also significantly harm charities, which would incur greater fundraising costs.

(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?

RESPONSE: The current rules accurately disclose needed information to consumers. The FTC should not impose a more rigid system, but should enforce its current bans on fraud and abusive practices on Caller ID misinformation.

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(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?

RESPONSE: Legitimate telephone service providers ensure that Caller ID can be transmitted including name and number, and should allow flexibility in specifying that information. MDS represents many charities and needs to be able to change Caller ID depending on the client and campaign.

(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. Do all telemarketers now have 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?

RESPONSE: Yes. All legitimate telemarketers should now have access to that technology and the FTC should amend the Caller ID provisions to require transmission of CPN or ANI.

(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?

RESPONSE: Yes. Telemarketers should transmit the name of the charity or their own name, and the FTC should allow use of non-deceptive trade names for this purpose.

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

RESPONSE: These differences have not caused problems with industry compliance. Any change in the TSR to impose specific rather than flexible Caller ID provisions would likely cause such a problem, however.

(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?

RESPONSE: No. Charities need flexibility to use different numbers (which allow consumers to contact the organization and make a "do-not-call" request) for tracking, security and other purposes. Public directory listings are expensive and inflexible, and would likely cause consumers delay in

contacting these numbers as some organizations' main numbers would not be available at all times.

(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?

RESPONSE: No. Charities often provide services across the country. Telephone numbers are often not associated with given locations. Some charities, further, choose to use 800 or other toll free numbers and this change would eliminate that consumer benefit.

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

RESPONSE: No. Charities and consumers should have the flexibility to use live voice or IVR responses on Caller ID numbers. Legitimate charities would return calls appropriately depending on content left on IVR systems.

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

RESPONSE: No. See above.

(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?

RESPONSE: No. MDS uses different numbers for tracking of different campaigns and clients. Some charities have multiple direct mail campaigns and those numbers would provide different services to consumers (e.g. program service including identification of individuals in need) not provided on Caller ID numbers.

(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?

RESPONSE: Yes. This would provide a benefit to consumers as some organizations are not commonly known by their legal name. The FTC should still enforce the TSR provisions against abusive practices, including deceptive Caller ID transmissions, but allowing legitimate charities to use legal d/b/a's would help, not hurt, consumers. Consumers could more quickly and

accurately recognize the commonly used name of their favorite charities if the FTC adopted this change.

(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?

RESPONSE: Yes. Consumers benefit from this flexible aspect of the TSR. There are times when a charity can't manage inbound calls. We can often do it more efficiently, and this results in more of the donor's dollar being applied to program service rather than cost of administration and fundraising.

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

RESPONSE: We believe the Caller ID rules help our clients' campaigns by notifying consumers of the nature of the call.

(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?

RESPONSE: We support the current version of the Rule, with the addition of allowing the charity to use a d/b/a or trade name instead of legal name if it so chooses.

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

RESPONSE: No. The current disclosures adequately protect consumers so long as the TSR provisions banning fraud or abuse are enforced.

IV. Conclusion

I invite you to contact me if I can be of further assistance. MDS believes the current version of the Rule strikes a flexible balance between consumer protection and legitimate fundraising practices. Please don't impose more rigid rules which would be followed by MDS and legitimate groups, but which would be ignored by abusive companies already in violation of existing provisions of the TSR. Please allow charities the choice to use their name and number, or ours, as this flexibility benefits consumers,

who can quickly recognize the names of their favorite charities, and the charities themselves which can more efficiently raise funds and apply them to needed programs.

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