

August 8, 2013

Federal Trade Commission
Office of the Secretary
Room H-13 (Annex B)
600 Pennsylvania Avenue NW
Washington, DC 20580

Re: Telemarketing Sales Rule, 16 CFR Part 310, Project No. R411001

Dear Sir or Madam:

The Electronic Transactions Association (ETA) is an international trade association representing over 500 companies that offer electronic transaction processing products and services. In response to the Federal Trade Commission's (FTC) July 9, 2013, *Notice of Proposed Rulemaking* that would ban the use of four payment methods in telemarketing sales transactions, the ETA submits the following comments. These comments are intended to inform the FTC regarding its proposal to prevent the use of certain retail payment methods in telemarketing sales transactions.

The FTC's proposed fraud rule (the Rule) would prohibit telemarketers and sellers from accepting what the FTC defines as "novel" payment methods (*i.e.*, remotely created checks, remotely created payment orders, cash-to-cash money transfers, and cash reload mechanisms). This proposed ban on payment methods gives rise to important issues for the ETA's membership. First and foremost, the ETA's members are concerned about the impact on the electronic commerce community if the FTC decides to ban what they term as "novel" payment methods in telemarketing sales transactions. These four payment methods are long-standing mechanisms for electronic payment, and not all transactions making use of them are fraudulent. While the FTC's goal appears to be to deter fraud within the telemarketing sales system, implementation of the Rule will prohibit legitimate uses of the aforementioned payment methods. The ETA is concerned that a payment processor's innocent acceptance or processing of a "novel" payment method in a non-fraudulent telemarketing sales transaction would be deemed an abusive act or practice.

The ETA submits that it is not the payment methods themselves that are fraudulent, but rather the actors that are attempting to sell goods and services in a fraudulent manner that constitute the true problem. If certain payment methods are banned, there is nothing to prevent bad actors from shifting their methods to other forms of payment to perpetuate fraud. The ETA is concerned that once such a shift happens, the

FTC will seek to ban the use of additional legitimate and more mainstream forms of electronic payment for telemarketing sales.

The ETA is additionally concerned that the Rule will discriminate against consumers who do not utilize traditional payment methods (e.g., cash, check, credit card, debit card) in favor of the convenience, flexibility, and safety of general purpose reloadable (GPR), or prepaid, cards. GPR cards mimic the features of a checking account (the ability to reload cards with additional funds and to set up direct deposits to GPR cards) or of a credit card (name brand prestige) without requiring the consumer to open an actual checking account or line of credit at a bank. GPR cards are a more convenient and less expensive alternative to money orders and check cashing services. GPR card spending is essentially capped at the amount of money loaded onto the GPR card, thus allowing consumers to avoid overdraft fees or accrual of high-interest credit card debt. Furthermore, there are consumer protections commonly afforded to GPR cardholders, particularly those who purchase the product from an issuer with a banking charter. They include: zero liability provisions, Reg E consumer protection for most network-branded cards, enhanced Reg E protections for cards receiving federal benefits payments, and FDIC insurance of funds passed through to individual cards. For cards not issued by a bank, state money transmitter laws provide safety and soundness protections. Such cards are essential to consumers with little or no traditional bank access; were the Rule implemented it would discriminate against non-banking individuals to whom more traditional payment methods are not available.

The ETA supports full, clear, and standardized disclosure of the fees associated with every transaction. A lack of clear and concise disclosure of all amounts associated with a transaction can result in consumers incurring expenses that will rapidly drain their account or card balance. While federal regulation requires banks to provide monthly statements to advise the bank account holders of their balance and transaction history, this is not the only mechanism consumers have to monitor their financial accounts. Today, checking account and prepaid card holders have instant digital access to all transactions and current available funds, which allows for a much earlier identification of unauthorized charges.

We welcome the opportunity to provide insight to the FTC on this critical matter and are willing to answer questions and/or set up a meeting to discuss our comments.

Submitted by:

Electronic Transactions Association

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