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November 13, 2014

***SUBMITTED ELECTRONICALLY AT FTCPUBLIC.COMMENTWORKS.COM***

Federal Trade Commission
Office of the Secretary
600 Pennsylvania Avenue NW, Suite CC-5610 (Annex B)
Washington, DC 205080

Re: NobelBiz, Inc. Comments on the Telemarketing Sales Rule Regulatory Review, 16 CFR Part 310, Project No. R411001

Dear Sir or Madam:

These comments are submitted regarding the Telemarketing Sales Rule ("TSR") Regulatory Review, 16 CFR Part 310, Project No. R411001 on behalf of NobelBiz, Inc. ("NobelBiz" or "the Company") in response to the Federal Trade Commission's ("FTC" or "the Commission") request for public comments regarding the TSR. NobelBiz appreciates the opportunity to provide information regarding the TSR and its relationship to NobelBiz technologies.

## I. NobelBiz Background

NobelBiz is a privately-held corporation that provides carrier and enhanced carrier services to the contact center industry. It began as a division of global telecom provider, Nobel, and was incorporated as an independent company focused on providing innovative technologies and compliance strategies to the contact center industry. Users of NobelBiz technologies include companies in an array of industries such as customer service, financial services, healthcare, and debt collection. Some users of NobelBiz technologies engage in "telemarketing," as defined

under the Telemarketing and Consumer Fraud and Abuse Prevention Act ("the Telemarketing Act") and the TSR.[1]

NobelBiz offers five distinct products that were engineered to efficiently ensure compliance with applicable laws and regulations governing the contact center industry. *DragonNet* is a cloud-based technology solution designed to identify illegal robo-callers which NobelBiz offers to states' attorneys general.[2] *RightTouch* uses zone mapping in conjunction with the national Local Number Portability ("LNP") database to preclude calls based on the time of attempted contact and the number of previous attempted calls. *MobileTouch* is designed to ensure compliance with regulations implementing the Telephone Consumer Protection Act ("TCPA"), which prohibit calls using an automated dialer to a mobile phone in the absence of express written consent. *SingleTouch* is a hosted contact center solution that facilitates compliance outside of the traditional, automated-dialing model by ensuring human intervention in initiating each phone call, while including all of the other conventional outbound contact center capabilities for productivity.

NobelBiz's flagship product is *LocalTouch*, a caller ID management solution that projects a unique automated number identifier (ANI) based on the area code of the called party. The ANI projected is owned by the individual contact center and any calls by the consumer to that number go directly to the center.

## II. Legal Background

As discussed above, many of NobelBiz's technologies are specifically designed to facilitate compliance with the TSR and other federal and state laws governing the contact center industry. Other NobelBiz technologies are designed to enhance contact center operations consistent with overlapping requirements imposed by various federal and state laws. In its request for public comments, the Commission noted that the "the TSR requires that telemarketers transmit to consumers' telephones accurate Caller ID information."[3] Moreover, the TSR expressly permits a telemarketer to "substitute (for the name and phone number used in, or billed for, making the call) 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."[4]

In adopting this requirement, the Commission explained that "telemarketers may transmit any number associated with the telemarketer that allows the called consumer to identify the caller."[5] The FTC characterized comments objecting to the cost of the requirement as "based substantially on an erroneous supposition that telemarketers would be required to transmit the specific telephone number from which a sales representative placed a given call." The belief was

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[1] 16 C.F.R. § 310.2(dd) (adopting the definition in 15 U.S.C. § 6106(4)).

[2] Federal Trade Commission (FTC) Robocall Challenge, DragonNet by NobelBiz, *available at*: http://robocall.challengepost.com/submissions/13364-dragonnet-by-nobelbiz.

[3] Telemarketing Sales Rule, 79 Fed. Reg. 46,732, 46,733 (citing 16 C.F.R. § 310.4(a)(8)).

[4] 16 C.F.R. § 310.4(a)(8).

[5] Telemarketing Sales Rule; Final Rule, 68 Fed. Reg. 4580, 4625 (Jan. 29, 2003).

erroneous because "telemarketers may transmit any number associated with the telemarketer that allows the called consumer to identify the caller," including "a number assigned to the telemarketer by its carrier, the specific number from which a sales representative placed a call, or a number used by the telemarketer's carrier to bill the telemarketer for a given call."[6]

The Commission's conclusion in 2003 is consistent with other federal and state laws that prohibit misleading uses of caller ID but permit the projection of any number owned and operated by the caller. Under the federal Truth in Caller ID Act of 2009 ("TCIA"), it is unlawful for any person "to cause any caller identification service to knowingly transmit misleading or inaccurate caller identification information with the intent to defraud, cause harm, or wrongfully obtain anything of value."[7] In promulgating regulations implementing the TCIA, the Federal Communications Commission ("FCC") explained that "[t]he legislative history of the [TCIA] makes clear that manipulation or alteration of caller ID information done without the requisite harmful intent does not violate the Act."[8]

The FCC went a step further in responding to comments from NobelBiz by explaining that use of caller ID technologies to display a local phone number is not a violation of the TCIA.[9] In explaining that the use of LocalTouch does not constitute a violation of the TCIA, the FCC recognized that display of a local number does not inherently mislead or deceive consumers. Courts have also recognized that the drafters of the TCIA sought to protect the use of caller ID technologies, like LocalTouch, that do not evidence an intent to harm or deceive.[10] Similarly, while certain state laws prohibit the transmission of inaccurate or misleading caller ID information with the intent to defraud, they do not restrict the capacity to use technologies like LocalTouch to project a number associated with the caller.

Finally, while debt collection calls are not subject to the TSR, we note that courts have found that the use of caller ID technologies like LocalTouch could not be considered false or deceptive under the Fair Debt Collection Practices Act ("FDCPA").[11] Plaintiffs have attempted to rely on

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[6] *Id.*

[7] 47 U.S.C. § 227(e).

[8] *In re Rules and Regulations Implementing the Truth in Caller ID Act of 2009*, Report and Order, FCC 11-100, ¶ 25 (Released June 22, 2011).

[9] *In re Rules and Regulations Implementing the Truth in Caller ID Act of 2009*, Report and Order, FCC 11-100, n.67 (Released June 22, 2011) ("We note that those commenters that requested that the Commission exempt manipulation of caller ID information in order to display a local phone number, asked in the alternative that the Commission clarify that manipulating caller ID to display a local number is not a violation of the Act. NobelBiz Comments at 4–8; NobelBiz Reply at 3–4. We agree that such a practice is not in and of itself a violation of the Act.").

[10] *See Teltech Sys., Inc. v. Bryant*, 702 F.3d 232, 239 (5th Cir. 2012) ("[T]here is an inherent federal objective in TCIA to protect non-harmful spoofing. ASA's proscription of non-harmful spoofing—spoofing done without 'intent to defraud, cause harm, or wrongfully obtain anything of value'—frustrates this federal objective and is, therefore, conflict-preempted.").

[11] The FDCPA prohibits debt collectors from "[t]he use of any false representation or deceptive means to collect or attempt to collect any debt or to obtain information concerning a consumer." 15 U.S.C. § 1692e(10). Additionally, debt collectors may not place telephone calls "without meaningful disclosure of the caller's identity." 15 U.S.C. § 1692d(6).

these provisions in asserting actions against debt collectors based on the collector's alteration of the caller ID displayed to consumers. Courts, however, have consistently held that projecting a local number owned by the caller should be distinguished from cases where a collector projects false or misleading information. For example, in *Scheffler v. Integrity Financial Partners, Inc,*[12] the court rejected the plaintiff's argument that a collector's "practice of using a local caller ID number for calls originating in Overland Park, Kansas" but delivered elsewhere constituted a violation of sections 1692d(6) and 1692e(10) of the FDCPA. The court concluded that display of the local number owned by the caller could not, as a matter of law, be considered false or deceptive such that it would constitute a violation of the FDCPA.

In sum, regulators and the courts have consistently held that the use of caller ID technologies projecting a local number associated with the caller does not violate various federal and state laws regulating the use of caller ID.

## III. Responses to Issues Raised in the Request for Public Comments

NobelBiz believes that the Commission should retain the requirement that telemarketers transmit the telephone number, and, when made available by the telemarketer's carrier, the name of the telemarketer, to any caller identification service in use by a recipient of a telemarketing call. This requirement, along with the Commission's explanation that an appropriately displayed number includes any number owned by or assigned to the telemarketer, permits consumers to return calls when convenient and either convey interest or disinterest in the goods or services being offered.

This minimizes consumer harm by reducing the total number of telemarketing calls to consumers and by providing a number where consumers can return the call at a time convenient to them, rather than receive additional calls in the future.[13] The consumer can then determine whether they are interested in the good or service being offered, decline the particular good or service, or instruct the telemarketer that they do not wished to be called again regarding any good or service.

While NobelBiz believes the Commission should retain 16 C.F.R. § 310.4(a)(8) as is, we provide the following responses to specific questions posed to facilitate the Commission's review.

### A. Technology – Questions 24-28

The Commission poses a series of questions regarding how technological advances have impacted the telemarketing industry, including the availability of Voice over Internet Protocol (VoIP). We note that the proliferation of wireless and VoIP numbers raises complications concerning the projection of caller name. Specifically, caller name data for wireless and VoIP is typically less reliable than numeric caller ID data.

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[12] *Scheffler v. Integrity Financial Partners, Inc.*, No. 12-CV-00188, 2013 WL 9768539 (D. Minn. Oct. 28, 2013).

[13] For instance, in a case study conducted by one of NobelBiz's debt collection clients this year, the use of LocalTouch increased "right party contacts," or the rate at which the targeted consumer was reached successfully, by 434%. Facilitating right party contact means that a telemarketer will not place multiple calls in an attempt to reach the consumer because they will have already reached the consumer at the outset.

Whereas numeric caller ID data is projected by the telecommunications carrier responsible for *originating* a call, caller name data is generally pulled by the carrier responsible for *delivering* the call, typically from one of several line information databases ("LIDBs").[14] An LIDB is a real-time database operated by both Local Exchange Carriers ("LECs") and by non-carrier data service providers. When the carrier responsible for delivering the call terminates the call, it may query an LIDB for caller name (referred to as "CNAM") to display to the called party. LIDBs use differing sources and procedures to attempt to ensure the quality of CNAM data. Wireless and ("VoIP") numbers may be loaded in some LIDBs but not others, or may be updated at different intervals, which may create problems with the accuracy or availability of CNAM data.

For various business and technical reasons, the accuracy of CNAM data continues to be a problem and has caused some carriers to either cease projecting CNAM data altogether or to attempt to use databases other than LIDBs to query CNAM information. Further, because carriers are under no obligation to project caller name, many carriers avoid the issue and simply choose not to display caller name. These issues are further complicated because the FCC is considering the implications of the long-term transition from the existing TDM technology network to an all-Internet Protocol (IP) network.[15] Such transition may entail an overhaul of the existing telecommunications infrastructure used to deliver caller ID information such that it is difficult to predict how caller ID data will be transmitted in the future.

Based on this, NobelBiz believes the Commission should retain the prohibition against failing to transmit the name of the telemarketer *when made available by the telemarketer's carrier*, but refrain from imposing any additional requirements. The Commission may also wish to clarify that the transmission of an erroneous name, or the failure to transmit any name, without the intent to deceive the recipient of the call would not constitute a violation of the TSR.

### B. Self-Regulatory Efforts – Questions 29-31

The Commission also sought information regarding the steps that industry associations have taken to self-regulate. As noted above, NobelBiz technologies facilitate industry self-regulation by preventing certain non-compliant calls from being delivered to consumers. For instance, MobileTouch prevents telemarketers from delivering calls to cell phones without prior express written consent and RightTouch relies on zone mapping technology to block calls based on location in accordance with the TSR's time limitations.

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[14] A common misconception regarding the out-pulsing of caller name data is that the information is "projected" out by the carrier providing service to a dialer. While some equipment may technically be capable of doing so, the public switched telephone network ("PSTN") consists of a vast array of non-homogenized equipment and older elements of the network may lack the capacity to accept such information. In other instances, carrier policy blocks the receipt of such information out of concerns of misuse or fraud.

[15] *See In re Technology Transitions*, Order, Report and Order and Further Notice of Proposed Rulemaking, and Proposal for Ongoing Data Initiative, FCC 14-5 (Released Jan. 31, 2014) (establishing a process for experiments and data collection initiatives to evaluate how customers are affected by technology transitions from a network based on time-division multiplexed (TDM) circuit-switched voice services to an all-Internet Protocol (IP) network).

These technologies provide telemarketers with a cost-effective way to monitor compliance with the TSR, along with overlapping federal and state requirements. NobelBiz supports the Commission's efforts to encourage use of such technologies for self-regulation.

## IV. Conclusion

For the aforementioned reasons, we encourage the Commission to retain the requirement that telemarketers transmit a telephone number, including any number owned by or assigned to the telemarketer, to any caller identification service in use by a recipient of a telemarketing call.

Respectfully Submitted,

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