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Office of the Secretary  
Federal Trade Commission  
600 Pennsylvania Avenue, NW  
Washington, DC 20580

Re: RIN 3084-AB19, TSR Caller ID Public Comments

Dear Secretary of the Federal Trade Commission:

As requested, I have reviewed the request for public comments published by the Federal Trade Commission with regard to the Caller ID provisions of the Telemarketing Sales Rule. Our firm represents a number of charitable organizations which rely on telephone fundraising as a means of raising funds to their services and programs.

The telephone calls placed by and/or on behalf of these organizations are used to educate the public regarding the organization and its program services and to solicit support for those services and thus are subject to the restrictions of the Telemarketing Sales Rule when those calls are placed through third party agents. Many of these organizations must use third party agents to administer these campaigns due to their expertise, resources, economy of scale, and the greater need for trained employees.

None of these organizations has ever had an inquiry or a complaint from the FTC regarding compliance with Caller ID or other issues. In short, our client charities conduct their fundraising activities in compliance with all applicable laws and regulations and have unblemished compliance histories.

I will address specific questions below but I urge the FTC to allow charities to retain the flexible structure currently offered by the Rule allowing them or their third party representatives to substitute their name or the charity's, based on the campaign, and their telephone number or the charity's, so long as it is answered during normal business hours and allows consumers to make a "do-not-call" request. If an entity intended to use these flexible provisions in a fraudulent fashion, there are other provisions of the Telemarketing Sales Rule that allow the Commission, private parties, e.g. 16 CFR §310.3(a)(4), or states to prohibit fraud or abusive practices.

The Commission should not impose a rigid scheme for Caller ID when abusive or fraudulent practices are already prohibited by other provisions in the Telemarketing Sales Rule and such a scheme would eliminate flexibility that has worked well for our clients.

## Response to Specific Questions

(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 clients find Caller ID use to be extremely widespread. Our clients clearly recognize consumers use Caller ID to protect their privacy and identify calls they wish to accept. Because most of our clients transmit their name, or the name of their representative, and a telephone number accessible during normal business hours, donors who answer calls welcome them because they know who is calling.

(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?

RESPONSE: I urge the Commission to retain the flexibility currently included in the Rule to allow a charity to use its name or the name of its representative when projecting Caller ID, as well as any telephone number so long as it is not a 900 number or other charged number answered during normal business hours which allows the consumer to make a “do-not-call” request. Our clients often include other features in the inbound call including customer service, donor education, etc. The currently flexible Rule allows our clients to track campaign results, honor “do-not-call” requests, answer consumer questions, and staff the inbound call number accordingly.

(9) 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: The FTC should not require that the number be a publicly-listed number as such listings are expensive and limited. Charitable organizations need flexibility to use other numbers which still provide consumer services and change those numbers to track given campaigns and results from different vendors they may use.

(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: As 800 numbers are often used for Caller ID, and as those numbers further provide consumers a benefit, the FTC should not adopt a physical location requirement. As the FTC knows, numbers are often ported and area codes are not always associated with given geographic areas. If a charity or other group engages in abusive practices, however, the Telemarketing

Sales Rule has other provisions which could be used to prevent fraud, e.g. if a representation is made in a script that services will be provided in a given area and they are not, the FTC has tools at its disposal to prevent future abuse.

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

RESPONSE: The FTC should retain the current flexible process allowing either live representatives or automated services to answer calls.

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

RESPONSE: Because of staffing and funding issues, most organizations cannot afford to always have a live employee answer every call. Many of our clients do, however, return phone calls, if the consumer requests, in a reasonable period of time. The FTC should maintain the current flexible structure and not require a “press 1 to speak to a live operator” or other more rigid requirement.

(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: The FTC should not require the same number that is listed in direct mail solicitations as many direct mail solicitations use multiple numbers based on campaign tracking and purpose of call. The Caller ID number should allow the consumer to make a “do-not-call” request during normal business hours and such additional options as the charity thinks best serves its donors and the FTC should not impose a rigid requirement.

(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, the Caller ID provision should be amended to allow the seller or telemarketer (and thus our client charitable organizations) to use recognized project or trade names rather than legal names which sometimes are confusing to consumers and may exceed the character limits for Caller ID devices. The FTC still has tools at its disposal to prohibit abusive name projection, but legitimate businesses and charities should be allowed to use their special program names, trade names and d/b/a's.

(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: Consumers benefit from these provisions because smaller charities can use their third party representatives to answer and process inbound calls caused by Caller ID faster and more efficiently than if the number was answered by the charity, itself. Charities need flexibility so as to best deliver program services and efficiently use funds raised from donors. This provision is one aspect of such flexibility.

(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: The FTC should not change the disclosure requirements found in 16 CFR § 310.4(d) and (e) which currently require disclosure of the identity of the charitable organization and the purpose of their call. Additional disclosures would interfere with the charitable message that the charity intends to deliver and likely violate free speech rights. The FTC already has tools at its disposal in the Telemarketing Sales Rule to adequately punish fraud or abuse, and forcing additional speech on client organizations would only disrupt those compliant organizations' activities.

## **Conclusion**

We, and our many charitable organization clients, would respectfully request that you retain the current structure. We would further request that the FTC consider improving the flexibility of the current rule by allowing charitable organizations to use a d/b/a, special program, or trade name with regard to projection of name via Caller ID as legal names are often ungainly and perhaps confusing to consumers when an organization uses a commonly recognized trade name.

Please do not hesitate to contact me if I can be of further assistance or answer any questions.

Very truly yours,

Errol Copilevitz  
For the Firm

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