

BEFORE THE FEDERAL TRADE COMMISSION

IN THE MATTER OF)
ADVANCE NOTICE OF PROPOSED RULEMAKING) RIN 3084-AB19
TELEMARKETING SALES RULE)

COMMENTS OF AT&T INC.

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COMMENTS OF AT&T INC.

AT&T Inc., on behalf itself and its affiliates, respectfully submits these comments in response to the Advance Notice of Proposed Rulemaking as published in the *Federal Register* on December 15, 2010 (75 Fed. Reg. 78,179)(2010) (“ANPRM”).

INTRODUCTION

AT&T appreciates the occasion provided by the Federal Trade Commission (“FTC”) in this proceeding to revisit the provisions of FTC’s Telemarketing Sales Rule (“TSR”)¹ in conjunction with caller identification (“Caller ID”) services. AT&T is vitally interested in this topic from a number of perspectives: as a provider of wireline and wireless communications services used for transmission of calls including telemarketing calls, as an offeror of a variety of Caller ID services and associated blocking and privacy management services, as a responder to law enforcement and security-related requests, and as a telemarketer of its own services. Although the focus of FTC is on the use of Caller ID services in the context of telemarketing, Caller ID services are, of course, used for many other purposes and in connection with many

¹ 68 Fed. Reg. 4579, 4669 (2003)(codified at 16 C.F.R § 310.1 *et seq.*)

other functions. These multiple purposes and functions can make it difficult to balance often competing interests. Adding to this, and, as noted by FTC,² changes in technology have expanded the options available for influencing the display of a caller's identification information while reducing the cost and technology barriers to using this flexibility.

Notwithstanding changes in technology, at the most fundamental level, the key to accurate and compliant Caller ID services used in connection with telemarketing remains the same: the providing of an accurate calling party number ("CPN")³ by the telemarketer (calling party) at the originating "switching" platform for the call. It is the CPN value entered at that origination point of the call to the national network that determines the Caller ID information displayed on the call recipient's equipment. For some platforms, the controller of the originating point may be a telecommunications carrier, such as AT&T. For other platforms, like Private Branch Exchange ("PBX") or Voice over Internet Protocol ("VoIP"), the controller of that origination point may not be a carrier. For many platforms, based on both new and existing technologies, the originating point resides with the calling party, so that party establishes the CPN, not a carrier.

Carriers such as AT&T are required under FCC regulations, with limited exceptions, to transmit the CPN to interconnecting carriers and to follow and not override any blocking request made.⁴ As noted above, Caller ID services are used with many types of calls. It is not technically feasible for AT&T, by looking at the signaling data, to distinguish between a CPN that has been manipulated and one that has not. Nor can it distinguish CPNs which are

² 75 Fed. Reg. at 78,180.

³ The Federal Communications Commission ("FCC") also references and regulates use of automatic number identification ("ANI") in its regulations as noted by FTC. 75 Fed. Reg. at 78,181.

⁴ 47 C.F.R. § 64.1601 (2004).

manipulated for permissible purposes, such as by law enforcement to protect their own identity, from phantom numbers provided improperly by a rogue telemarketer under these rules.

The same principle is true with regard to the data used to populate the centralized calling name (“CNAM”) database. It is the responsibility of the telemarketer to provide accurate data for use in the database. Some telemarketers will provide accurate CPN and caller name information and others will not.

AT&T believes that both FTC and FCC regulate the use of Caller ID in the context of telemarketing at the proper level: by requiring the telemarketer to provide accurate caller identification information.⁵ The current FTC rules, combined with FCC’s rules and regulations, provide adequate guidance and regulation in the area of telemarketing and use of Caller ID services for those purposes. Those rules also strike a reasonable balance among many goals: protecting consumers and allowing them to choose which calls to receive or opt out of, accommodating the wide variety of purposes for calls in addition to telemarketing calls, respecting requests for privacy, managing the costs of compliance and facilitating the flow of commerce.

However, AT&T shares FTC’s concern about the improper use of current and unknown future technology to provide misleading caller identification and information and “phantom” numbers that either cannot be dialed or do not reach a telemarketing representative or, at minimum, a telemarketing voice mail box. Some telemarketers choose to locate in off-shore locations and engage in “geography shopping” to find areas that do not have the technological capability to support FTC’s rules, and then fail to invest in readily available technologies which can display domestic numbers or otherwise comply with FTC requirements. AT&T believes that

⁵ 16 C.F.R. § 310.4(a)(7); 47 C.F.R. § 64.1601(e)(covering both numbers and names).

the efforts of industry and FTC are best focused on enforcing the existing regulations and rules, rather than implementing additional rules that may not be necessary and may simply place more burdens on already-compliant industry members, while not reining in abusers. AT&T also encourages FTC to use its authority to work with industry and consumers in education and outreach, and in expediting investigation efforts to address areas of abuse including those identified by FTC in the ANPRM, such as spoofing and geography shopping,⁶ as well as associated abuses such as voice phishing (“vishing”).⁷

As provided in more detail in its responses to questions 3-5, 8, 9, 10-13, and 14 below, AT&T respectfully submits that the key to achieving the goals of the TSR is accurate CPNs and enforcement, rather than additional rules, or requiring additional technology-based solutions.

I. QUESTIONS 3-5

As noted by FTC in its description of how Caller ID services work,⁸ “Telephone calls on the public switch telephone network are routed to their destinations by means of a specialized protocol called ‘signaling system 7,’ or ‘SS7.’ SS7 includes a ... CPN that is intended to identify the telephone number of the caller, and a privacy code that indicates whether access to this information should be restricted. Carriers using SS7 are generally required to transmit the CPN associated with an interstate call.”⁹ (citations omitted.) SS7 networks simply pass on the CPN inserted into the SS7 message by the originating switching platform, to the extent one is provided. SS7 does not have the technical capability to authenticate whether a CPN is valid or

⁶ 75 Fed. Reg. at 78,182-78,183 (Section III).

⁷ This involves misidentified voice calls used in an attempt to obtain sensitive information by posing as a trustworthy source.

⁸ 75 Fed. Reg. at 78,180 (Section I).

⁹ *Id.* at 78,180.

“spoofed.” Once entered into the data stream at the origination point, the CPN drives the resulting Caller ID output at the terminating end. Accurate CPNs and caller name information thus drive the entire Caller ID process on the public switched telephone network.

New technologies, which may make “spoofing” easier and less costly, still support and enable the insertion of a CPN to identify a telemarketer and provision of a dialable 10-digit number that will reach the telemarketer either live or via a voice mail platform. As long as valid and dialable 10-digit CPNs are entered at the origination point, sufficient and accurate information should be provided at the terminating point, whatever technology is used to originate a call. Telemarketers who elect to avoid the rules do so by a variety of means: creating inoperable CPNs by the use of VoIP or Internet-based call origination platforms, inputting strings of inoperable numbers into the CPN field of originating PBXes, or by locating operations off-shore. As explained above, carriers do not have the technical capability to control the entry of CPNs they receive and, indeed, are required by FCC regulations to transmit them as received.¹⁰ The best response to end these abuses, then, is not a technical one, but a concerted and joint effort, led by FTC, to investigate abusers and enforce existing rules. Enforcement efforts today are often triggered at the terminating end of a call by a consumer complaint.¹¹ But the issue is not at the terminating end of the call and cannot be prevented by focusing there; rather, these investigation, enforcement and education efforts should be directed to the call originators.

¹⁰ See *supra* p. 2.

¹¹ See 75 Fed. Reg. at 78,182 n.38.

II. QUESTIONS 8, 14

AT&T strongly supports FTC's recognition of the importance of continuing to coordinate with FCC in the area of telemarketing and believes that the rules and regulations of both Agencies are already sufficiently clear and coordinated and that no further harmonization is required. In addition, the rules of both Agencies are adequate to address the necessary guidelines and strike a good balance among all interests. This is true for both Caller ID purposes and for oral disclosures once the call is connected. The regulations, if followed, provide consumers sufficient information to make a decision on whether to accept the call in the first instance and, once accepted, how to evaluate the offer and exercise any opt-out or do-not-call choices. The rules also clearly provide that the called party must be able to use Caller ID information to call and reach the telemarketer for additional inquiries, or to request placement on the telemarketer's do-not-call list. As stated above, the problem lies in the abuse of "bad actors" rather than in any problems in, confusion with, or coordination between, the rules of FTC and FCC. Equally important, both FTC's and FCC's rules provide a solid basis for enforcement of these rules.

III. QUESTION 9

AT&T believes, as noted above, that the current rules strike a good balance between providing consumers with sufficient information to make informed decisions about telemarketing calls while allowing businesses sufficient flexibility to design their sales programs efficiently from a cost perspective and to customize them to fit the needs of their businesses. AT&T does not recommend implementation of the additional measures proposed in question 9 as they put more burden and expense on compliant telemarketers without increased benefit to consumers or enhanced ability to identify and enforce the rules against non-compliant telemarketers. Requiring that a telephone number used in telemarketing be listed in a publicly-available

directory (question 9(a)) denies businesses offering multiple products to a variety of market segments the flexibility to use different phone numbers for different products. Customized (and often nonpublished) numbers are designed to be more relevant to the product being offered and avoid customer confusion and frustration by creating centers of specific product expertise. Customized numbers may also assist businesses to increase sales rates by tailoring offerings to customers and ensuring that representatives receiving customer calls will be knowledgeable on a specific product. Directories become quickly out of date, do not lend themselves to use of multiple, more relevant, numbers and may cause confusion where a listed number is a business billing listing rather than a telemarketing listing.¹²

Requiring a number with an area code and prefix associated with a specific physical location (question 9(b)) or requiring that a live agent always be available (question 9(d)) could significantly increase costs. Businesses should be permitted to exercise sound business judgment by aggregating multiple locations and determining the proper balance between live and automated services to ensure best customer coverage at the most reasonable cost. Requiring the same telephone number to be used in telemarketing calls as in direct mail or other advertising (question 9(e)) assumes that businesses treat all methods of selling to the public in the same way. This is not necessarily the case. Direct mail is not necessarily followed up by a telemarketing call and different sales channels are run from different locations in different ways. The current rules adequately protect consumers while allowing businesses the flexibility to invest their sales budgets and design their sales programs in the way that makes most sense for their businesses and best serves their customers.

¹² Current FTC rules permit use of the name of the telemarketer or the name of the entity on whose behalf the call is being made. 16 C.F.R. § 310.4(a)(7).

IV. QUESTIONS 10-13

For the reasons given above, and specifically those in response to question 9, AT&T believes that FTC's current rules already strike the proper balance for all interested parties: neither additional (question 11) nor fewer (question 13) requirements are beneficial or likely to strike a better balance. This balance and the clarity of the existing rules are of benefit to all parties (question 12.)

CONCLUSION

AT&T supports FTC's goals in this proceeding and urges FTC to work with consumers and the industry to provide education on, and enforcement of, the current rules. FTC should use its investigative powers to focus special attention on the originating point of telemarketing calls, the quality of the CPNs and calling party name provided, and to abuses at this critical point. AT&T looks forward to working with FTC, consumers and the industry in supporting these efforts.

Respectfully Submitted,

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