



January 28, 2011

Via Electronic Submission

Federal Trade Commission, Office of the Secretary
Room H-113 (Annex Q)
600 Pennsylvania Avenue, NW
Washington, DC 20580

RE: Advance Notice of Proposed Rulemaking Concerning Caller Identification, Matter P104405 – Comments of NobelBiz, Inc.

Dear Commissioners,

NobelBiz, Inc. welcomes the opportunity to provide comments to the Federal Trade Commission (FTC) regarding the Advanced Notice of Proposed Rulemaking (ANPRM) regarding caller identification (caller ID) services and disclosure of identity regulated by the Telemarketing Sales Rule (TSR). As a telecommunications carrier providing calling party identification services to businesses and organizations making calls to customers and constituents, we are deeply engaged in these issues and supportive of the FTC's efforts to protect consumers from nefarious actors.

Legitimate Uses of Calling ID Services

We commend the FTC for noting that there are numerous legitimate uses of calling party identification technology services by companies like NobelBiz. LocalTouch, NobelBiz's calling party identification technology, enables a wide range of businesses to establish a local market presence through use of local area codes, akin to a business establishing a local presence through an advertisement in the local Yellow Pages directory.

Additionally, LocalTouch provides services that support important government programs benefiting consumers. For example, the Home Affordable Modification Program requires mortgage lenders to speak to qualified mortgage holders and explain their rights under the program. Mortgage holders are more likely to answer a local call than one coming from an unknown area code. If the lender is using an unknown area code and unable to reach the homeowner by phone, then they must dispatch someone for a site visit to the mortgage holder. A successful telephone call, which may be made more successful by using a local area code, would save U.S. taxpayers the time and travel cost of a home visit.

Congressional Action

As you are aware, the Congress has addressed the subject of truth in caller identification, and on December 15 of 2010, completed passage of The Truth in Caller ID Act of 2009 (Pub. L. No. 111-331); it was subsequently signed into law by the President on December 22, 2010. It is clear from the Congressional statements and the law, that the Congress was focused on preventing

harmful and nefarious caller ID spoofing upon consumers. In the final House floor debate, Members noted the importance of distinguishing between legitimate and harmful practices.

Representative Rick Boucher stated that “[b]y prohibiting the use of caller ID spoofing only where the intent is to defraud or deceive, this measure will address nefarious uses of the technology while continuing to allow those legitimate uses.”¹ He further noted that in certain legitimate uses, “there is not intent to cause harm, which is an element of the crime of deception.”² Representative Eliot Engel similarly stated that the “bill outlaws the deceptive use of caller ID spoofing technology if the intention of the caller is to deceive and harm the recipient of the call.”³ And the House Committee Report suggests that, “to be legally actionable, fraud and deceit require the intent to cause harm to the person to whom misleading information is being conveyed.”⁴

Representative Clifford Stearns made the clearest statements to this effect on the floor of the House. He noted that the bill specifically prohibited “manipulating caller ID information with the intent to harm others” and that “[d]eception with intent is our target.”⁵ Representative Stearns added that the language in the Act was carefully crafted to ensure that it did not encompass legitimate services that could manipulate caller ID for legitimate reasons.

For example, domestic violence shelters often alter their caller ID information to simply protect the safety of victims of violence. Furthermore, a wide array of legitimate uses of caller ID management technologies exists today, and this bill protects those legitimate business practices. For example, caller ID management services provide a local presence for teleservices and collection companies. These calling services companies are regulated by the Federal Trade Commission and Federal Communications Commission, which require commercial callers to project a caller ID that can be called back. This bill is not intended to target lawful practices protecting people from harm or serving a legitimate business interest.⁶

Representative Eliot Engel subsequently echoed this analysis and noted that the reason for the “intent to defraud or cause harm” in the Act language was because “we don’t want some legitimate reasons to use this technology to be outlawed.”⁷

¹ 111 Cong. Rec. H2523 (Apr. 14, 2010).

² *Id.*

³ *Id.* at H2524.

⁴ *Id.* at 7 (citing the definition of “deceit” in Black’s Law Dictionary 8th ed. 2004).

⁵ 111 Cong. Rec. H8378 (Dec. 14, 2010).

⁶ *Id.*

⁷ *Id.* at H8379.

The ANPRM

1. The FTC specifically asks in its ANPRM whether the TSR should be amended to better achieve the objectives of the caller ID provisions. In our view, the newly-enacted Truth in Caller ID Act does just that, making an amendment to the TSR unnecessary. The law makes it unlawful to cause a caller ID service to knowingly transmit misleading or inaccurate caller ID information “with the intent to defraud, deceive or wrongfully obtain something of value.”
2. Because of telephone number portability for both landlines and mobile phones, the NPA (area code system) is no longer representative of the geographic/physical location of the caller. Any action to restrict caller ID to an NPA-based system does not serve the purpose of protecting consumers from abusive callers. Already, more than 350 million cellular and VOIP numbers are not restricted to a specific geographic region.

The FTC Should Not Act Too Fast on Caller ID

The Truth in Caller ID Act requires the FCC to promulgate regulations for the implementation of the law within six months of enactment. This requires the FCC to initiate a rulemaking by June 22, 2011. Under these circumstances, NobelBiz urges the FTC to wait until the FCC has responded to Congress’s statutory mandate in the precise area of caller ID discussed in the FTC ANPRM. By waiting, the FTC will avoid the possibility of adopting regulations inconsistent with the FCC.

We are confident the Commission that has consistently acted to avoid duplication or conflicting positions will do so in this instance by permitting a brief but necessary delay in its process.

Sincerely,

Richard L. Mahfouz
Chief Executive Officer
NobelBiz, Inc.