

Before the
FEDERAL TRADE COMMISSION
Washington, D.C. 20580

In the Matter of:)
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Telemarketing Sales Rule: Advanced Notice of)
Proposed Rulemaking; Request for Public Comments)
Concerning Caller Identification Services and)
Disclosure of the Identity of the Seller or Telemarketer)
Responsible for Telemarketing Calls.)
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FTC File No.: P104405

COMMENTS OF THE
AMERICAN TELESERVICES ASSOCIATION

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I. GENERAL OVERVIEW.

The American Teleservices Association (“ATA”) respectfully submits these comments in response to the Commission’s Advance Notice of Proposed Rulemaking (“NPRM”) dated December 15, 2010 that seeks public comments on provisions of the Federal Trade Commission’s (“FTC” or “Commission”) Telemarketing Sales Rule (“Rule”) concerning caller identification (“Caller ID”) services and disclosure of the identity of the seller or telemarketer responsible for telemarketing calls.

II. AMERICAN TELESERVICES ASSOCIATION.

The American Teleservices Association is the only non-profit trade organization dedicated exclusively to the advancement of companies that utilize contact centers as an integral channel of operations. Founded in 1983, ATA represents more than 4,000 contact centers that account for over 1.8 million professionals worldwide. ATA members include companies with inbound or outbound contact centers, users of Teleservices, trainers, consultants, and equipment

suppliers who initiate, facilitate, and generate telephone, Internet, and e-mail sales, service, and support.

ATA is committed to serving the needs of its members by recommending the highest standards of quality for the channel and protecting the rights of consumers. It regularly promotes training and compliance with all state and federal laws pertaining to telephone and marketing communications to our membership. As such, ATA provides leadership in the professional and ethical use of the telephone for conducting business and is committed to serving the needs of its members, recommending the highest standards of quality for the channel, and protecting the rights of consumers.

III. ATA SELF-REGULATORY ORGANIZATION (“SRO”) STANDARDS.

First and foremost, ATA reminds the Commission that its Self-Regulatory Organization (“SRO”) creates best practices to provide consumers with the greatest level of protection from fraudsters and unethical telemarketers. SRO member organizations are required to adhere to industry standards that frequently are more stringent than existing laws and regulations. They are then audited by certified individuals to confirm that they are, in fact, adhering to those stringent standards.

Section 4.10.2 of the SRO Standards provides:

All Members shall, when making Outbound Sales Calls, ensure that: 1) calling equipment is used that is capable of transmitting Caller ID information; and 2) the telephone number transmitted via Caller ID allows the called Consumer to identify the entity making and/or (as appropriate) response for the call.”¹

As part of any Outbound Sales Calls, Sellers “shall transmit the Seller’s name (along with the number as required, above) when such name-

¹ SRO Standards, Section 4.10.2. A similar provision applies to Service Bureaus. See SRO Standards, Section 4.10.2.2 et seq.

transmittal service is made available by the Seller's telephone company."²
"All Sellers directly making Outbound Sales Calls shall also transmit a customer service number that is answered during Seller's Normal Business Hours."³

The SRO Standards also provide that Members may "determine, based upon business need, whether to have the number transmitted via Caller ID answered by a live representative of the Seller or Service Bureau (as appropriate), by an IVR system, or by a Voicemail system."⁴

ATA recommends that the FTC continue to permit sellers and telemarketers to decide amongst themselves whether calls should be answered by live agents or automated systems. This standard recognizes that costs associated with employing live agents to answer these calls are significant and could pose a serious threat to companies' financial wellbeing.

IV. FTC'S REQUEST FOR COMMENTS.

A. Better Identify Identities Responsible for Illegal Telemarketing Practices.

The Commission seeks comment on whether the TSR should be amended to better achieve the objectives of the Caller ID provisions – including namely to enable consumers and law enforcement to use Caller ID information to identify entities responsible for illegal telemarketing practices. The Commission also solicits comments on whether it should amend the TSR specifically to regulate services that misrepresent, conceal, or obscure the identity of telemarketers or sellers, or should expand the provision of the TSR that require oral disclosure of the identity of the seller or charitable organization on whose behalf a call is being made to require additional or more specific disclosures.

² SRO Standards, Section 4.10.2.4.1. A similar provision applies to Service Bureaus. See SRO Standards, Section 4.10.2.4.2.

³ SRO Standards, Section 4.10.2.1.

⁴ SRO Standards, Section 4.10.2.3. "If the number transmitted via Caller ID is to be answered by (when available) a live representative, the Service Rep must be trained on the proper identification, handling and processing of Consumers' In-House Do Not Call requests." *Id.* at Section 4.10.2.3.2.

ATA contends that no modifications to the TSR are necessary, as the TSR's existing regulations accomplish the Commission's objectives and satisfy the Commission's concerns.

For example, the TSR identifies as an *abusive telemarketing act or practice*:

“[The failure] to transmit or cause to be transmitted 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; *provided* that it shall not be a violation 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.”⁵

This provision promotes the accountability sought by the Commission by requiring telemarketers and/or sellers to transmit “the telephone number . . . of the telemarketer.” The Rule further requires that the telephone numbers transmitted accept entity specific do-not-call requests if called during normal business hours.⁶ Regardless of whether the telephone number transmitted is local, long distance, or toll-free, the Commission and law enforcement can easily investigate and discover the entity to whom the number is assigned. In fact, ATA members report receiving both informal requests and subpoenas from law enforcement to assist them in discovering to whom a particular number is assigned on a routine basis.

Additionally, the TSR already requires telemarketers to transmit their names or the names of the sellers on whose behalf the calls are initiated when this feature is made available by their carriers. This, too, should empower law enforcement to determine the identities of sellers or their telemarketers. To the extent that the Commission is concerned about entities that transmit generic, deceptive, inaccurate, or abbreviated names that impede the efforts of law enforcement, ATA contends that such behavior is already prohibited by the TSR's existing provisions.

⁵ 16 C.F.R. § 310.4(a)(8).

⁶ *Id.*

Nevertheless, to the extent the Commission is concerned with automated answering systems that do not identify the seller or telemarketer on whose behalf the call was initiated, ATA does not object to a modification of the TSR that requires automated systems to disclose the name of the telemarketer that initiated the call or the identity of the seller on whose behalf the call was made.

Furthermore, ATA contends that the recent passage of the Truth in Caller ID Act⁷ accomplishes the ends sought by the Commission. On December 22, 2010, President Obama signed into law the Truth in Caller ID Act (the “Act”). The Act makes it “unlawful for any person within the United States, in connection with any telecommunications service or IP-enabled voice service (“VoIP”), 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, unless such transmission is exempted.”⁸

The Act creates a broader prohibition on “spoofing” than that which the Commission currently seeks – effectively eliminating a majority of the concerns set forth in the NPRM.⁹ It also casts a wider blanket on the types of calls than those of which the TSR regulates. The Act, along with the TSR’s existing provisions, provides law enforcement with enhanced and broader tools to identify fraudsters. Accordingly, no additional regulation by the FTC is necessary at this time.

Moreover, Congress directed the Federal Communications Commission (“FCC”) to prescribe regulations implementing the Act no later than six (6) months after the date of enactment.¹⁰ The FCC must also “report to Congress whether additional legislation is necessary to prohibit the provision of inaccurate Caller ID information in technologies that are successor or

⁷ Truth in Caller ID Act, 47 U.S.C. § 227(e).

⁸ 47 U.S.C. § 227(e)(1).

⁹ The Act’s blanket prohibition is subject to the specific exemptions for law enforcement and court orders. 47 U.S.C. 227(e)(3)(B)(ii).

¹⁰ Id.

replacement technologies to telecommunications services or VoIP.”¹¹ At the very least, the Commission should await the FCC’s forthcoming Congressionally-mandated regulations prior to proposing those of its own.

B. Local Exchange Numbers.

The NPRM seeks comments on various measures under consideration by the FTC in its attempts to identify current (and future) technologies that may assist and/or circumvent Caller ID enforcement. One such measure is whether the “TSR should require that the telephone number transmitted be . . . (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.”¹²

Many sellers and/or telemarketers choose to transmit a telephone number that is local to the consumer being called. This provides consumers with a simple and cost effective manner for calling back the seller and/or telemarketer -- whether to purchase the item being offered or to make an entity-specific do-not-call request that does not require consumers to incur long distance toll charges. It should make no difference to the Commission or other law enforcement whether this transmitted telephone number is local, long distance or toll-free, provided that the telephone numbers terminate in a call center that can accommodate the consumers’ entity-specific do-not-call request. It should also be pointed out that telemarketers and/or sellers may transmit a variety of telephone numbers in outbound Caller ID signal in order to identify the programs on which the calls are being made. Accordingly, in the event consumers dial telephone numbers displayed on Caller ID devices to learn the purposes of the calls, the call center agents can inform the consumers the exact calling programs on which the calls were made based upon the telephone numbers dialed by the consumers.

¹¹ Id.

¹² 75 F.R. 78179, 78184.

The transmission of telephone numbers local to the consumers called also permit sellers to distinguish between regional offers that may be made. For example, a national cable television provider may have different offers and promotions for consumers residing in the Washington, DC area than they do for consumers residing in Los Angeles. Inbound agents can immediately identify the metropolitan area in which the consumer resides – and hence the applicable programs to offer – based upon the telephone numbers dialed by the consumers. This is a preferred scenario than one in which agents can only respond by saying that they are unable to inform the consumers why the calls were made or what the applicable offers are. Conceivably, sellers that call on scores of different calling programs throughout the country may legitimately broadcast scores of different telephone numbers in the Caller ID signal.

C. Transmission of “Alpha Information.”

The Commission also seeks comment on whether it should affirmatively mandate that sellers and/or telemarketers transmit the name of the sellers/and or telemarketers.¹³ ATA reminds the Commission, however, that many carriers continue to lack the ability to transmit “alpha information.” By implementing such a requirement, the Commission would interfere with the business marketplace and severely disadvantage certain carriers over others.

¹³ 16 C.F.R. § 310.4(a)(8).

V. CONCLUSION.

In conclusion, ATA respectfully suggests that the majority of the FTC's concerns set forth in the NPRM are adequately addressed among the Act, the Rule, and the SRO Standards such that no additional rulemaking is necessary at this time.

Respectfully submitted,

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