

Advance Notice of Proposed Rulemaking Concerning Caller Identification,
Matter P104405

As a company that provides numbers to companies for use by their in-house call centers, as well as commercial dialing operations, call center service bureaus, and other business that perform outbound calling to the public, we thank the FTC for addressing some issues of concern in this area and for the opportunity to comment on those issues. We agree that the Telemarketing Sales Rule is in need of further clarification.

Omega Services supplies its clients with numbers to transmit when placing outbound calls. These numbers are displayed in the originating number field of the call recipient's caller ID device and, when dialed, are switched within the network to terminate to a number of the client's choosing, allowing our clients to control the routing of their return calls for a particular location or campaign. In addition, our clients can dynamically control the alphanumeric (CNAM) string associated with these numbers so as to remain in compliance with the TSR and yet maintain a degree of flexibility and scalability of operation. By virtue of this, we fully concur with the FTC that "these technologies can be used to serve legitimate interests of telemarketers, sellers, and charitable organizations in altering the caller number and name displayed by Caller ID services."

However, providers of these legitimate and needful services do not control the dialing practices or outbound call content of their clients any more than their local telephone service providers do, and have no way to determine with certainty that a client is operating in compliance with the Rule.

When designing our service, our management team did discuss making a policy to require an explanation of the nature of the call as a prerequisite of making a name field change. However, in such an instance, we would be put in the position of "approving" their use without any direct knowledge or control of the client's dialing campaign. Such a procedure, in our opinion, would open us up to liability for our clients' practices without providing the means to control those practices.

Our approach, therefore, has been to contractually require our clients to use our services in a manner that complies with all regulations regarding the type of campaign they are engaging in and the customers they are calling. Since the client knows the content of the call, the relationship they or their sub-client has with the party being dialed, and other details, they are best suited to determine if they are operating within the confines of the law. Only the originating party can verify that dialing is being done in compliance with all appropriate laws and regulations.

It is with this perspective that we submit the following comments on several of the questions posed:

(3) Would changes to the TSR improve the ability of Caller ID services to accurately disclose to consumers the source of telemarketing calls, or improve the ability of service providers to block calls in

which information on the source of the call is not available or has been spoofed? If so, what specific amendments should be made to the TSR?

Yes. Many in the industry are still uncertain about what they can and cannot put in the CNAM field and still be compliant. We would like to see more defined guidelines, though, given that CNAM is restricted to 15 alphanumeric characters, there will still need to be some flexibility. For instance, if the company name fits without abbreviation, then perhaps it should not be abbreviated, but clients also like to tinker with their name appearance to see if one version gets a better answer rate than another – using spaces, not using spaces, going by the acronym or spelling out the company name in full, etc. And in some instances the acronym of a company name is better known to the public than their full name.

Also, the TSR could clarify what constitutes proper and improper use of CNAM and the purpose of a CNAM listing. There is a certain degree of confusion in the industry over the purpose of CNAM, in part because the TSR is currently somewhat vague on the matter but also because the carriers themselves often make use of the CNAM field when no data is available from the provider. They will then indicate to their subscribers the rate center of the calling party, the general type of call, whether the party is in or out of the local calling area, etc. – and, because this is done inconsistently from carrier to carrier with no seeming guidelines, this leads to the impression that proper CNAM is much more flexible than even the broad definitions of the TSR might allow.

Among the changes which could be made to the TSR in this regard are:

- A. to define the company that owns the calling number (and, by extension, any company to whom that number has been assigned) as the controlling party with regard to CNAM display on Caller ID units and not the LEC of the subscribing Caller ID clients, and to specify a particular display to be used in the event there is no associated CNAM or the receiving party's LEC is unable to retrieve it, such as 'UNAVAILABLE'.

This would help eliminate confusion in the consumer's mind as to whether the CNAM display on their device represents the calling party's chosen CNAM or is an insertion by the LEC. It would also eliminate confusion in the marketplace and charges of misrepresentation that occur when the LEC-inserted CNAM display proves misleading.

We have seen cases where the rate center name of a calling number was the chosen display of a LEC, which for some reason had failed to retrieve the associated CNAM. Unfortunately, the rate center name was similar to the company name of the calling party's chief competitor and this, due to no fault of the calling party, opened them up to charges of misrepresentation. If there was a distinct and uniform standard for the LEC-inserted CNAM field display on a Caller ID device in the event of no associated CNAM being available from the data provider, it would help eliminate confusion for the consumer, the calling party, and the industry in general.

- B. to establish that retrieval and display of the associated CNAM data for a calling party's number is required of the LEC, barring data service outages, and is not subject to restriction by service region or other deliberate choice not to display.

Some LECs have in the past chosen to only retrieve and display the CNAM for calling party numbers within their service region, inserting either the rate center name or simply 'OUT OF AREA' for all others. In addition to essentially cheating their own subscribers out of the data which they have (via their Caller ID service subscription fee) paid to receive, this creates an inappropriate advantage for local businesses and in effect acts as a form of restriction of trade.

- C. to clarify that proper CNAM listings may identify the product being offered, the company dialing or the client on behalf of whom the calls are being placed, since many businesses subcontract their out-dialing operations to commercial dialing houses and do not maintain their own in-house staff. Most commercial dialing companies are not commonly known to the public, and if ABC Company is dialing on behalf of MegaBank, it is of greater use to the consumer to see 'MEGABANK' in the CNAM display and know that the call may be in regards to their account than it would be for them to see 'ABC COMPANY' and perhaps be better informed as to the direct calling party's identity but left in the dark as to its purpose. Given that the primary purpose of CNAM is assumedly to provide *information* about the incoming call to aid in the decision to answer and the number field (CNUM) to provide information regarding its *source*, it would seem to us to be more useful to display the ultimate product or client that contracted the call rather than simply the company placing it.

(5) What role do telephone service providers (including those that are not common carriers) play in providing services, equipment or software that allows telemarketers, sellers and charitable organizations to manipulate the caller number and name information in telemarketing calls? The TSR provides that it is a violation of the Rule for a person to provide substantial assistance or support to any seller or telemarketer when that person knows or consciously avoids knowing that the seller or telemarketer is engaged in any act or practice that violates enumerated provisions of the Rule. Is this provision adequate to regulate service providers that assist telemarketers and sellers in manipulating caller number and name information?

With the exception of CNAM provisioning, the services that Omega provides are not substantially different from those offered by a standard RESPORG in provisioning toll-free numbers to clients who use those numbers in their outbound dialing. And in several respects are actually more transparent. With toll-free numbers (TFNs), the number is not directly associated in any public directory with a physical location and establishing ownership requires contacting a private RESPORG ID service to determine the

client and target number of the TFN, even when that TFN is being used by an in-house dialing operation. Smaller wireline phone companies and VoIP providers often are not RESPORGs themselves, but contract with a larger provider for their tollfree needs, adding yet another layer of abstraction between the number and ultimate client. Yet TFNs have been in use by outdialing operations for decades and no one considers them to be “spoofing”.

With the services provided by companies like Omega, using toll numbers, you have the same degree of removal from the client as you can with a standard TFN, but they’re much easier for the public to determine carrier ownership of, as that information is in the public domain and readily available online.

It should also be noted that Omega does not provide services to our clients beyond call forwarding and customizable CNAM appearance on numbers. We do not carry outbound traffic for our clients, possess or maintain their dialing databases, provide them with or set up their dialing equipment, program their software, negotiate with their carriers for trunk assignment, provide them with Do Not Call lists, answer their return traffic or provide any customer services to their customers on their behalf. Our involvement in our clients’ dialing operations is no greater than that of their local phone company. We provide them with numbers at their request and set those numbers up with forwarding and CNAM per their specification. We are no more knowledgeable regarding their use of service than is their local phone company, and barring providing additional services and actually participating in their outdialing operation it is not clear to us how we might reasonably become so.

Consequently, we do not feel that the provision regarding companies which provide “substantial assistance” to violators of the TSR is adequate barring a clear definition of what constitutes “substantial assistance”. Currently, this could conceivably include simply offering such services - services that have been determined by the FTC to be beneficial to the consumer. As written, there is far too much room for interpretation.

It is our belief that our proper role should be contained to providing and maintaining service and that the sole responsibility of compliance with the TSR should be understood to rest firmly on the shoulders of the firms making the calls. To us, the priority is in making it understood that that responsibility lies with the clients using the service and actually making the calls.

To this end, our terms of service include an agreement by the client their use of our services will adhere to all applicable rules and regulations, which it is their sole responsibility to discover and apply.

This responsibility for legal and regulatory compliance is reaffirmed and accepted by the client on every subsequent change request that they submit through our webportal.

We also maintain a clear policy of client disclosure. On each change request, we confirm with each of our clients that should there be any inquiry regarding the identity of the company utilizing that number it will be provided. In this way, clients are held accountable for how their numbers are answered when dialed and the content of the CNAM field while also put on notice that our services cannot be used to disguise or hide the origin of their dialing.

But this is also where we firmly believe the FTC can institute a change to the Rule that will have a positive effect on reducing violations and complaints. We believe that, if the companies using our service (and other services like ours) know that their information is easily attainable by individuals, regulatory, and law enforcement agencies, they will be more diligent in policing how the service is used and self-regulate.

To this end, we are currently developing a database for use by the FTC, state Attorneys General offices and other regulatory and law enforcement agencies that will provide them with online access to number lists, client contact information, and the forwarding, CNAM and assignment histories for those numbers. We are aware of the amount of time, energy and resources that governmental agencies can normally spend in tracking down this information and feel it can only benefit both compliance and enforcement if that information is more easily available.

Our request to the FTC in this comment period would be to consider making this type of reporting mandatory for all of our class of service providers. We believe this is essential to the teleservices industry and that greater transparency can hold companies truly accountable, provide savings in both time and resources to law enforcement, and streamline the process of addressing consumer complaints.

This could be implemented by either having the FTC house a central database, or by making it mandatory for any company providing these services to register their database with the FTC. We feel this would alleviate many of the issues for the FTC and other governing bodies as well as providing a way for the service providers to clearly protect ourselves from being accused of providing “substantial assistance or support”.

(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? 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?

(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?

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

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

(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?

We believe that (c) would be the most effective in dealing with the issues that are contemplated by these proposed changes to the TSR, assuming any automated service also provided a means for the caller to remove themselves from the client's call list. It is our opinion that the other options suggested would prove too restrictive and cumbersome to implement by the industry and would be rendered unnecessary by a requirement such as (c).

(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?

If use of the service were required to comply with option (c) from Question 9, it would not be nearly as important for the name field to be restricted to the identity of the caller, since, when the number is dialed, the calling party could be quickly and easily identified. That point is underscored by the consideration of the vast number of calls made where the recipient does not have Caller ID or for some other reason the CNAM does not display. In that case, the number is really the most important part of the equation. Even without Caller ID, a consumer can return the call and identify the caller.

Under those conditions, we believe it is beneficial to allow CNAM to be descriptive of the call, rather than merely provide a company name (which in many cases doesn't fit within a 15 character limitation and therefore gets abbreviated into something non-descriptive).

There are many positive uses of the CNAM field so long as the number provides access to the caller and their information. To unduly restrict the CNAM content would, in our opinion, be unnecessary. Of course, this flexibility should not be so broad as to allow fraudulent use, so CNAM should have to be either descriptive of the caller, the seller or the product/service being offered.

(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?

In a service bureau environment it is essential, and in many cases the best option. Many service bureau clients do not have the inbound bandwidth to handle the return calls generated by an outbound campaign. Therefore, the number transmitted for Caller ID must ring back to the service bureau. With Question 9(c) in place, the service bureau could be identified easily via the number and the name field would identify the seller and/or product.

Referring back to our comments regarding Question 10, we believe the key here is quick and easy access to calling party information via the number. This will allow for more flexibility in the CNAM field, providing for the myriad of different applications of service bureau / client relationships and increased visibility for the consumer to not only who is calling, but what the purpose of the call might be. In other words, we would like to see some flexibility in the Rule to allow CNAM to be descriptive of the call purpose rather than simply the caller, given that the number should in all cases serve that purpose. In practical application, the 15 characters allotted for CNAM can prove inadequate for identification and the focus for identification of the call should be on the number itself, especially as it serves all consumers and not just the ones subscribing to Caller ID.

We thank the FTC for giving us the opportunity to comment on these issues and trust that these comments will be considered in making the changes necessary to make the TSR more useful to consumers, services more transparent to law enforcement, and provide clearer compliance guidelines for callers and service providers.