

**Before the
FEDERAL TRADE COMMISSION
Washington, DC 20580**

In the Matter of)	
)	
Telemarketing Sales Rule: Advanced)	FTC Matter No. P104405
Notice of Proposed Rulemaking)	
Concerning Caller Identification)	

COMMENTS OF SOUNDBITE COMMUNICATIONS, INC.

SoundBite Communications, Inc. (“SoundBite”), by its attorneys, hereby submits the following comments regarding proposed changes to the caller identification (“Caller ID”) requirements of the telemarketing sales rule (“TSR”).^{1/} SoundBite is a leading provider of automated voice messaging services, offering integrated voice, text, and email messaging solutions that organizations in industries such as collections, financial services, retail, telecom and media, and utilities rely on to send messages for collections, customer care, and sales and marketing applications.

INTRODUCTION AND SUMMARY

SoundBite shares the Commission’s concern that increasing incidence of misleading and even fraudulent Caller ID spoofing by unscrupulous parties has often “frustrate[d] the purpose of the TSR’s requirements regarding Caller ID” and “undermined the ability of consumers and law enforcement to identify the entities responsible for illegal telemarketing practices.”^{2/} As the Commission suggests, widely available Caller ID spoofing technologies have made it relatively easy for unprincipled parties to manipulate Caller ID information in violation of current TSR requirements and in frustration of the objectives of the Caller ID requirement. But the proper

^{1/} Telemarketing Sales Rule (“TSR”), 75 Fed. Reg. 78179 (Dec. 15, 2010) (“*Request for Comments*”).

solution to increased violations of the Commission’s Caller ID rules is not more rules – new rules that parties inclined to ignore existing Caller ID rules will ignore just as easily as they ignore existing rules. Rather, the more effective response to this problem is increased enforcement of the current rules, which have provided a solid framework for protection of consumer privacy since they were first adopted in 2003.

In particular, the Commission should not adopt a rule requiring that telephone numbers used in telemarketing calls be listed in publicly available directories or used in advertising as the number of the telemarketer or seller or specifying that telephone numbers used in telemarketing calls must have an area code and prefix associated with the telemarketer or seller’s physical location or principle place of business.^{3/} Not only would these requirements fail to resolve any problems attributed to unlawful Caller ID spoofing (because they would be ignored by unscrupulous spoofers just as easily as the spoofers ignore the current rules), but, as explained below, they would introduce unnecessary impediments to the ability of law-abiding telemarketers and sellers to design calling programs that are most beneficial and least intrusive to consumers.^{4/}

On the other hand, the proposed requirements that calls to the telemarketing call Caller ID number be answered with identification of the telemarketer or seller and allow for prompt access to a live operator are sound business practices currently followed by most telemarketers and sellers and should be adopted. The proposed requirement that calls allow prompt access to a live operator, if further considered, should specifically allow for the use of automated systems

^{2/} *Id.* at 78181-82.

^{3/} *Id.* at 78184.

^{4/} *Cf.* Improving Regulation and Regulatory Review – Executive Order of the President, Jan. 18, 2011, § 1(a) (“Our regulatory system . . . must identify and use the best, most innovative, and least burdensome tools for achieving regulatory ends.”), *available at* <http://www.whitehouse.gov/the-press-office/2011/01/18/improving-regulation-and-regulatory-review-executive-order>.

for assertion of do-not-call requests and other automated services, in addition to reasonable access to a live representative.

I. Existing FTC and FCC Rules Already Outlaw Identified Abuses from Caller ID Spoofers

Existing Caller ID rules in the TSR^{5/} and similar rules promulgated by the Federal Communications Commission (“FCC”)^{6/} require that telemarketers use available Caller ID technology to transmit the name and telephone number of either the telemarketer or the seller with each telemarketing call. Thus, the use of Caller ID spoofing technology to transmit fake telephone numbers or to transmit “only cryptic abbreviations or generic terms, such as ‘warranty alert,’ that do not allow the consumer to identify the telemarketer or seller” already constitute violations of existing rules.^{7/} Likewise, the transmission of “telephone numbers [that] have only an attenuated connection to the telemarketer or seller”^{8/} would be inconsistent with the existing requirement that the Caller ID number is one that the called party can use to make a do-not-call request during regular business hours.^{9/} Finally, law enforcement needs are met by the existing rules that require calling parties to transmit either the Calling Party Number (“CPN”) or Automatic Number Identification (“ANI”) of the telemarketer or seller that is “answered during regular business hours.”^{10/}

^{5/} 16 C.F.R. § 310.4(a)(7).

^{6/} 47 C.F.R. § 64.1601(e).

^{7/} *Caller ID Request for Comments* at 78183.

^{8/} *Id.*

^{9/} 47 C.F.R. § 64.1601(e)(1).

^{10/} *Id.*; 16 C.F.R. § 310.4(a)(7).

II. Some of the Proposed Requirements Will Reduce Flexibility Beneficial to Consumers Without Deterring Spoofers

An entity willing to send inaccurate or inactive telephone numbers and inaccurate or misleading caller name information, in violation of existing Caller ID rules, would likely not be deterred by additional rules requiring that numbers used be listed in public directories or advertisements, or be associated with a seller's physical location. Those additional requirements would, however, reduce the legitimate use by telemarketers and sellers of alternate phone numbers that would provide consumers with useful identifying information.

A requirement that the number used in Caller ID of a telemarketing call be a number "listed in publicly available directories" or in advertisements "as *the* telephone number" of the telemarketer or seller^{11/} would, in essence, require that only the single "main" number for a seller or telemarketer be used. This raises the possibility of overloading main switchboards, requiring callers to go through one or more levels of having their call transferred before reaching the appropriate department of the telemarketer or seller, and requiring consumers to pay for a long distance telephone call if the seller's or telemarketer's directory or advertised number is not in the called party's local calling area. Moreover, such a requirement would do nothing to further assist consumers in identifying the calling party where the telemarketer or seller is already complying with existing rules on use of the Caller ID name field.^{12/} By contrast, consumers realize significant benefits from the use of Caller ID to present a customer service number of the telemarketer or seller (avoiding the need to be transferred from the switchboard of a main

^{11/} *Caller ID Request for Comments* at 78184 (emphasis added).

^{12/} Further, as noted above, parties that violate existing rules on proper use of the Caller ID name field would likely have no problem with ignoring any new requirement on what number can be used in the Caller ID number field.

number) that is either a local or toll-free number (which might not be in a directory or advertisement, but avoids toll charges for the consumer calling the number).

The proposed requirement that the Caller ID for telemarketing calls show “a number with an area code and prefix that are associated with the physical location or principal place of business of the telemarketer or seller”^{13/} could also prevent telemarketers or sellers from using toll-free or local phone numbers that allow consumers calling the number to avoid toll charges. This could especially be a problem for businesses that have a national sales market, but lack “brick and mortar” branch offices in numerous locations that could allow them to use local numbers in those areas.

III. Other Proposed Requirements Are or Could Be Useful Clarifications or Additions to the TSR

In contrast with the foregoing, the proposed requirement that when the Caller ID number is called a live operator or automated service identify the telemarketer or seller is simply a good business practice currently followed by responsible telemarketers and sellers, and its adoption could be a useful clarification.^{14/}

A requirement that the Caller ID number provide “prompt and easy communication with [a] live representative” could also be a helpful addition to the TSR, provided that it is qualified to allow the initial use of automated systems for assertion of a do-not-call request and to resolve other customer service issues prior to connection to a live representative during regular business hours. It is likely that many persons calling the number in a telemarketing call Caller ID field will be doing so to make a do-not-call request. All or nearly all of these callers will appreciate the ability to do so through an easy-to-use voice-activated or key-press automated system, rather

^{13/} *Caller ID Request for Comments* at 78184.

^{14/} *Id.*

than having to talk with a live operator (often after having to wait in a calling queue) to do so. Other simple customer service operations, such as change of customer address or telephone number, can also be easily and conveniently handled by an automated system.

Nevertheless, SoundBite agrees that callers desiring to speak with a live operator should be allowed to do so by calling the Caller ID number, and they can be easily allowed to do so through a key-press prompt in any modern automated system. Because many small businesses cannot afford to make 24 hour, 7 days a week live operator service available, however, any requirement that live representatives be available upon calling the Caller ID number should be limited to availability during regular business hours.

CONCLUSION

For the foregoing reasons, the Commission should utilize enforcement of the existing Caller ID rules to address violations of the Caller ID requirements in the TSR, rather than adopting new requirements that will limit the flexibility of telemarketers and sellers to meet consumer needs.

Respectfully submitted,

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