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Via Electronic Filing: <https://ftcpublic.commentworks.com/FTC/tsrantifraudnprm/>

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

Re: Telemarketing Sales Rule, 16 CFR Part 310, Project No. R411001

To Whom It May Concern:

This letter is submitted to the Federal Trade Commission (“FTC”) in response to the notice of proposed rulemaking (“Notice”) regarding whether the Telemarketing Sales Rule (“TSR” or “Rule”) should be amended, among other things, to bar sellers and telemarketers from accepting remotely created checks, remotely created payment orders, cash-to-cash money transfers, and cash reload mechanisms (collectively referred to in the Notice as “novel payment methods”) as payment in inbound and outbound telemarketing transactions (“Proposed Amendment”). This letter is being provided on behalf of Interactive Communications International, Inc. (“InComm”), a distributor of prepaid cards, including general purpose reloadable (“GPR”) cards, non-reloadable open-loop payment cards, and closed-loop gift and store cards. InComm also operates the Vanilla Reload Network (“VRN”) cash reload mechanism and provides various bill payment solutions. The remarks in this comment letter represent only InComm’s perspectives on the Proposed Amendment and not those of any other party in InComm’s distribution network.

For purposes of this letter, InComm would like to emphasize the fact that it would not be considered a “seller” or “telemarketer” under the TSR. As such, InComm would not be directly subject to the prohibitions of the Proposed Amendment. InComm, however, wishes to comment generally on the benefits and uses of cash reload mechanisms in bill payment, e-commerce and person-to-person transactions and to express concern that the broad scope of the Proposed Amendment may prohibit these legitimate and convenient transactions between consumers and entities or persons which may be deemed “telemarketers” or “sellers.” We are grateful for the opportunity to provide our comments.

Comments

The Proposed Amendment will probably not prevent the fraudulent use of cash reload mechanisms in illegal telemarketing schemes.

The primary objective of the Proposed Amendment appears to be the reduction of victim-assisted fraud committed through the use of novel payment methods – including cash reload mechanisms – in combination with telemarketing schemes carried out by sophisticated fraudsters. While InComm strongly supports consumer protections to ameliorate and prevent such fraud and abuse, it is unclear how the Proposed Amendment will accomplish this goal.

The FTC's Notice proposes prohibiting a legitimate use of cash reload mechanisms (i.e. payment to a biller, e-commerce merchant, friend or family member who may engage in telemarketing activities) in the hopes that such a prohibition will also eliminate their illegitimate use (i.e. payment to a fraudster). Such an effect seems unlikely since fraudsters are already breaking other criminal and civil laws relating to fraud and extortion. If the Proposed Amendment passes, it is unlikely to be a deterrent because the fraudsters will simply violate the TSR in addition to the other laws they are already breaking.

Simply prohibiting the legitimate use of cash reload mechanisms does nothing to impede or hinder the ability of criminals to continue to utilize these novel payment methods in already-illegal telemarketing fraud schemes. Even if the Proposed Amendment takes effect, criminals will, practically speaking, be able to conduct the same illegal activities in the exact same manner as they had done on the previous day. Thus, the Proposed Amendment would only affect those legitimately using cash reload mechanisms and is therefore overbroad and detrimental to consumers and retailers without any reasonable public benefit.

The broad scope of the proposed amendments may prohibit legitimate uses of cash reload mechanisms in transactions unrelated to telemarketing.

The all-encompassing scope of the Proposed Amendment and the broad definition of “telemarketing” under the TSR could potentially prohibit consumers’ legitimate uses of cash reload mechanisms that are unrelated or incidental to any telemarketing activity. Namely, we are concerned that consumers would not be allowed to use cash reload mechanisms to pay a third party for a legitimate transaction, because such third party may be deemed to be a “telemarketer” or “seller” by virtue of the third party’s overall business activities.

To explain, cash reload mechanisms are a legitimate method of payment for many products and transactions. Their uses extend to not only reloading prepaid cards, mobile wallets and virtual accounts, but also paying bills for services such as phones, electricity or credit cards or paying e-commerce merchants for goods and services. Users of cash reload mechanisms are accustomed to having the option to utilize the product to make various payments.

Many companies (e.g. utility, cable or phone providers) have business divisions that are engaged in “telemarketing” in order to attract and retain customers. These same companies also permit customers to pay bills or pay for goods and services via telephone or online means, including through use of a cash reload mechanism. These transactions afford consumers the ability to pay

bills quickly, conveniently, safely and inexpensively. The Proposed Amendment could have the effect of prohibiting these legitimate uses.

These types of transactions are being conducted in a secure manner by legitimate companies and for purposes unrelated to telemarketing, and should **not** be prohibited under the TSR. Consumers most likely to pay bills with cash reload mechanisms or use cash reload mechanisms to conduct e-commerce transactions are those “unbanked” or “under-banked” consumers who do not have credit cards or checking accounts from which to pay their bills. Under the definitions of the TSR, it is not clear whether consumers could continue to pay billers and e-commerce merchants with cash reload mechanisms. If the TSR restricts this legitimate use, these consumers would likely be forced to stand in long lines to pay these bills in person via cash payments or avoid purchasing from e-commerce merchants.

Cash reload mechanisms are no more vulnerable to fraud than other payment methods.

The FTC’s Notice describes cash reload mechanisms (and other novel payment methods) as especially susceptible to fraud or other criminal activity. In reality, while cash reload mechanisms may currently be the product of choice for fraudulent telemarketers, these payment methods are no more vulnerable to fraud than other payment methods, such as credit cards, wire transfers, or cash deposits to a demand deposit account (“DDA”).

Further, while the use of cash reload mechanisms by fraudsters has recently gained significant attention in the government and in the media, the rate of fraud for these products remains quite low with respect to the overall transaction volume and dollar amount.

Industry participants have voluntarily implemented numerous anti-fraud measures.

The Notice states that, as opposed to conventional payment methods, novel payment methods such as cash reload mechanisms provide no systematic monitoring to detect or deter fraud and do not provide consumers with adequate resources when unauthorized transactions or telemarketing fraud occurs. This assertion fails to account for the numerous proactive fraud prevention, detection, and response measures implemented by industry participants.

For example, in terms of prevention and detection, InComm has implemented several processes to prevent the use of its VRN product by criminals and to detect when such illegal use is occurring. Such processes include (i) fraud monitoring and alerts, (ii) transaction and velocity review, (iii) special victim assisted fraud bulletins disclosed to consumers through marketing efforts, product websites and social media, (iv) providing to retailer agents tips on how to spot customers at risk as potential fraud victims, and (v) suspending ATM access for underlying GPR products to which cash may be reloaded and withdrawn in high risk countries, such as Jamaica,¹ where criminals conduct large-scale victim assisted fraud operations. Because all the victim-assisted fraud InComm has seen has been tied to GPR cards and the fast “draining” of funds shortly after being loaded, this last step has proved especially successful at curbing these fraudulent activities.

¹ OIG, [Hearing on the Direct Deposit of Social Security Benefits](http://oig.ssa.gov/newsroom/congressional-testimony/hearing-direct-deposit-social-security-benefits), available at: <http://oig.ssa.gov/newsroom/congressional-testimony/hearing-direct-deposit-social-security-benefits> (last visited July 8, 2013).

In terms of responding to fraud allegations, InComm has taken action to restrict the targeted accounts and return recovered funds to claimants when possible. InComm then takes action to prevent further fraud by examining any accounts affiliated with the target account and similarly restricting those affiliated accounts.

InComm lacks the ability to recognize whether its VRN cash reload mechanism is being redeemed by Telemarketers or Sellers.

InComm is not able to determine whether its VRN cash reload mechanism is being redeemed by telemarketers because it doesn't know the identity of each and every GPR cardholder receiving funds, and even when InComm does know the identity, it doesn't know whether the person is acting as a "telemarketer" or using a stolen identity.

To explain, InComm's VRN cash reload mechanism can be used to load both InComm's financial products (where InComm would know the identity of every consumer cardholder, but would not know if that individual was acting as a telemarketer or seller) and other third parties' financial products (where InComm would not know the consumer cardholder's identity but instead relies on the participating bank or money transmitter receiving the load to perform customer verification). **In both instances, it is highly likely that any criminal telemarketer is using a stolen identity to open and access such financial product.** InComm would therefore be unable to shut off the redemption of its VRN cash reload mechanism by telemarketers or track down telemarketers that continue to use the VRN cash reload mechanisms following implementation of the Proposed Amendment, if it is adopted.

Further, there is a significant concern that InComm and other providers of novel payment methods could be subject to liability under the TSR for "substantially assisting" a telemarketer or seller by "consciously avoiding knowing" whether the telemarketer or seller is violating the TSR. Since "processing and submitting account information" constitutes substantial assistance to a telemarketer or seller and since it is not possible for providers to truly know whether the person redeeming a novel payment method is a telemarketer or seller, it is not clear whether providers would be held in violation for fraudsters' actions. We do not believe the FTC desires this outcome, but there is nothing in the Proposed Amendment that currently clarifies allocation of liability in this manner. **At a minimum, the FTC should clearly state in any final amendment that providers would not be providing "substantial assistance" merely by processing a redemption of a novel payment method by a telemarketer or seller.**

Responding to specific questions posed by the FTC:

Question 14: What, if any, systematic fraud monitoring exists for cash reload mechanisms?

Please see the above section titled "***Industry participants have voluntarily implemented numerous anti-fraud measures***" for our response to this question.

The prepaid industry as a whole has taken a proactive approach to implementing fraud monitoring for its products, especially for GPR cards featuring cash reload mechanisms. InComm is a member of the Network Branded Prepaid Card Association ("NBPCA"), a non-profit trade association representing a diverse group of organizations that take part in delivering network branded prepaid cards to consumers, businesses and governments. The NBPCA has a

sub-action group called the Prepaid Anti-Fraud Forum (“PAFF”). PAFF works to develop best practices, hand books, strategies, and to educate both NBPCA members and law enforcement agencies in an effort to combat fraud and other criminal activity facing the industry. These actions and practices, as well as the numerous mechanisms and policies implemented by InComm and other industry participants, provide the industry with a cohesive and systematic approach to the monitoring of fraud related to cash reload mechanisms.

Question 15: What, if any, dispute resolution rights for consumers are provided in connection with cash reload mechanisms?

Numerous dispute resolution rights are available to consumers in connection with cash reload mechanisms. Currently, most of these rights are a product of state law. For example, in Texas, cash reload mechanism providers must supply consumers with notice regarding how to file a complaint if a dispute arises.² Such notice must inform the consumer how to first contact the applicable customer service representative of the provider and then additionally tell the consumer how to contact the Texas Department of Banking if the complaint remains unresolved.³ Based on these requirements, InComm provides Texas consumers (and ultimately, all consumers) a toll-free number at which they can reach InComm’s customer assistance division, and also the full contact information for the Texas Department of Banking if a consumer’s complaint remains unresolved after contacting InComm directly.⁴

The FTC should note, however, that even in the absence of state law, cash reload mechanism providers like InComm voluntarily afford their consumers with dispute resolution rights. When consumers purchase a VRN reload pin, they are notified that such reload pins are the equivalent of cash and should be treated as such by the consumer. Consumers are cautioned to only provide their reload pin to authorized persons. If a consumer, however, loses the pin or if the pin is stolen and the consumer can provide proof of purchase prior to pin usage, the consumer can contact customer service and obtain a refund. InComm also provides consumers with detailed directions to resolve VRN load issues if, for example, a consumer is not able to complete a VRN transaction or if a consumer has loaded VRN funds onto a prepaid card and such transaction is not shown on the current balance of the consumer’s account.⁵ Thus, numerous alternative dispute resolution rights apply to cash reload mechanisms by way of requirements of state law and also voluntary offerings of providers such as InComm.

Question 16: Are there widely available payment alternatives to remotely created checks, remotely created payment orders, cash-to-cash money transfers, and cash reload mechanisms sufficient for use in telemarketing by consumers who lack access to credit or traditional debit cards? If not, please describe the reasons why these novel payment methods are necessary and the types of telemarketing transactions for which these novel payment methods are necessary, including the types of products or services involved, whether the telemarketing calls are inbound or outbound, etc.

InComm believes that cash reload mechanisms are the best payment method for many consumers, especially when they lack access to credit cards and debit cards. InComm stresses

² 7 TAC § 33.51(c) (2013).

³ *Id.*

⁴ Vanilla Reload Network, Home, available at: www.vanillareload.com (last visited July 7, 2013).

⁵ *Id.*

the importance of maintaining a consumer's right to choose their own method of payment for products and services and the importance of ensuring that all consumers have access to a payment method that best suits their needs.

Question 22: Are there legitimate uses for cash-to-cash money transfers and cash reload mechanisms in telemarketing? If so, please describe the reasons why such transfers are necessary and the types of telemarketing transactions for which such transfers are necessary, including the types of products involved, whether the telemarketing calls are inbound or outbound, and whether the need is limited to certain groups of consumers – e.g., those who do not have bank accounts. In addition, please provide information as to why these transactions could not be conducted using alternative payment mechanisms such as electronic fund transfers or debit or credit cards, including what additional costs, if any, would result from using such payment alternatives.

Cash reload mechanisms offer a flexible, low-cost and convenient payment method for consumers in a variety of transactions. For example, cash reload products offer consumers a way to pay bills for their phones, cable television, and credit cards, and to pay e-commerce merchants for goods and services. Further, cash reload mechanisms provide consumers the ability to manage and transfer funds as they see fit, for example, to reload their own GPR card or the GPR cards of family and friends. This is particularly true in the case of the unbanked or under-banked who rely on cash reload mechanisms and other GPR products as a way to manage and transfer funds and gain access to an increasingly electronic economy.⁶

Question 24: Is the harm caused by cash reload mechanisms in telemarketing outweighed by countervailing benefits to consumers or competition? If so, please identify and quantify the countervailing benefits.

Cash reload mechanisms offer numerous and substantial benefits to consumers of which the FTC should be aware. These products open the doors of economic participation to the estimated 68 million unbanked and under-banked Americans,⁷ allowing them to access an economy increasingly reliant on electronic methods of payment. Additionally, these products offer consumers convenient means of managing finances, transferring funds to relatives and friends, paying for e-commerce transactions and paying for various monthly bills such as phone, electricity and credit cards.

InComm appreciates the significant harm to consumers who fall victim to fraudsters committing telemarketing fraud; however, the benefits of cash reload mechanisms to a large segment of the population should not be arbitrarily curbed in the mere hope of eliminating such harm to a very small segment.

Broadly prohibiting the use of cash reload mechanisms in any telemarketing transaction (i) does not provide narrow tailoring necessary to preserve legitimate uses, (ii) will likely not deter

⁶ Todd J. Zywicki, Working Paper: The Economics and Regulation of Network Branded Prepaid Cards, January 2013, available at: <http://www.nbpca.org/~media/ADB453535FEA4786A5EF9DAA65B8C2B5.ashx> (last visited July 2, 2013).

⁷ FDIC, 2011 FDIC National Survey of Unbanked and Underbanked Households (updated September 2012).

criminal telemarketers from accepting cash reload mechanisms, and (iii) threatens to harm consumers by indiscriminately limiting their ability to use their funds as they wish.

InComm therefore urges the FTC to consider alternative methods to achieve its objective. At a minimum, any amendment to the TSR should be drafted in a manner that will not prohibit consumers from using cash reload mechanisms and other novel payment methods for legitimate purposes, the transactions for which are unrelated or incidental to the payment recipient's telemarketing activities.

Conclusion

For the reasons set forth above, InComm respectfully requests that the FTC consider alternative means of achieving its objective to uniformly prohibiting the use of cash reload mechanisms in all telemarketing transactions.

InComm appreciates the opportunity to provide the FTC comments on the Notice. If we may provide you with any additional information or if you would like to discuss our comments further, please feel free to contact me at (770) 240-6173 or at rskiba@incomm.com. Thank you.

Sincerely,

Robert Skiba
Executive Vice President