

November 13, 2014

Donald S. Clark  
Secretary  
Federal Trade Commission  
Office of the Secretary  
600 Pennsylvania Avenue, NW  
Suite CC-5610 (Annex B)  
Washington, D.C. 20580

Re: **Telemarketing Sales Rule Regulatory Review;  
16 CFR Part 310, Project No. R411001**

Dear Mr. Clark:

On behalf of the American Bankers Insurance Association (ABIA), thank you for the opportunity to provide comments concerning the Federal Trade Commission's (Commission) regulatory review of the Telemarketing Sales Rule.<sup>1</sup> ABIA is the insurance subsidiary of the American Bankers Association. ABIA's mission is to develop policy and provide advocacy for banks in insurance and to support bank-insurance operations through research, education, compliance-assistance, and peer-group networking opportunities. Many ABIA members are involved in the outbound telemarketing of products and services to their customers, including use of pre-acquired account information.

ABIA urges the Commission not to change its rules regarding use of pre-acquired account information, as the information provides a convenient way for consumers to be charged without having to continually repeat an account number for succeeding transactions. We also request that the Commission not propose to require a record be kept of every outbound telemarketing call, as that would be extremely burdensome on sellers and telemarketers. Because it is in their interest to keep a record of some calls, they should be given the discretion to determine which records should be maintained.

### **Use of Pre-acquired Account Information**

In its notice of regulatory review of the telemarketing sales rule (TSR), the Commission asked whether certain regulatory and industry changes, particularly regarding a company's disclosure of pre-acquired account information to a third-party vendor in the context of the internet, warrants a change in how pre-acquired account information is regulated when used for telemarketing. We urge the Commission to recognize the continued benefits provided to consumers through the use of pre-acquired account information for telemarketing.

The TSR defines "pre-acquired account information" as "any information that enables a seller or telemarketer to cause a charge to be placed against a customer's . . . account without obtaining the account number directly from the customer . . . during the telemarketing transaction pursuant to

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<sup>1</sup> 79 Fed. Reg. 46732 (Aug. 11, 2014).

which the account will be charged.”<sup>2</sup> In the 2003 amendments to the TSR, the FTC noted that there are two situations in which pre-acquired account information comes into existence and is used for a succeeding sale of a product or service.

The first scenario is where a seller provides access to its customer base, including customer account numbers, to a third party seller.<sup>3</sup> Federal privacy law prohibits a financial institution from disclosing a customer’s account number to a non-affiliated third party for use in marketing, including telemarketing.<sup>4</sup> Moreover, the TSR makes it illegal to traffic in unencrypted account numbers.<sup>5</sup> Accordingly, there is no need to change the regulation of pre-acquired account information in that context.

The second scenario where pre-acquired account information is used involves one of two methods: in the first method, a seller or telemarketer will acquire a customer’s account information during a sales transaction and later use the information to charge the customer’s account without the customer having to provide the account information again. The second method is the use of pre-acquired account information during “upsells,” the solicitation of goods or services following an initial transaction *during a single call*, either by the same seller or telemarketer (an internal upsell) or by a different seller or telemarketer (an external upsell).<sup>6</sup> With both of these methods, the use of pre-acquired account information often makes transactions more convenient for customers, and ABIA’s members commonly use both of these methods.

The Commission has noted the convenience afforded a customer when pre-acquired account information is used in a subsequent transaction by the same seller or telemarketer, or during an upsell:

[T]here are many transactions involving pre-acquired account information that are beneficial to, indeed sometimes expected by, consumers. For example, ‘a customer who places quarterly orders for contact lenses by calling a particular lens retailer may provide her billing information in an initial call, with the understanding and intention that the telemarketer will retain it so that, in any subsequent call, the retailer has access to this billing information.’ Similarly, a customer who provides his account number to make a purchase in an initial telemarketing transaction may be frustrated to have to repeat that account information to consummate certain upsell transactions, particularly when the upsell is offered by the same telemarketer [an internal upsell]. In that case, there may be an expectation that the telemarketer will have retained, and be able to reuse, the account information the customer provided only moments ago. . . . [T]he key to such transactions is the fact that the consumer makes the decision to supply the billing information to the seller, and *understands and expects* that the information will be retained and reused for an additional purchase, should the consumer consent to that purchase.<sup>7</sup> (Emphasis added.)

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<sup>2</sup> 16 CFR 310.2(x).

<sup>3</sup> 68 Fed. Reg. 4580, 4595 (Jan. 29, 2003).

<sup>4</sup> 15 USC §1681(d).

<sup>5</sup> 16 CFR 310.4(a)(6).

<sup>6</sup> 16 CFR § 310.2(ee).

<sup>7</sup> 68 Fed. Reg. 4619-4620 (Jan. 29, 2003).

Telemarketing continues to need this pre-acquired account information, so we do not believe there is any need for the Commission to take any regulatory action that would affect the use of pre-acquired account information in this manner. That includes the ability to use pre-acquired account information in combination with a free-to-pay conversion (a free trial offer, which is a form of a negative option feature). When used in that manner, the TSR provides additional consumer protections by requiring (1) that the seller or telemarketer obtain from the customer during the telemarketing call the last four digits of the account to be charged, and (2) that the entire telemarketing call be recorded.

### **Call Recordkeeping**

The Commission has also asked whether it should require that a record be kept of every outbound telemarketing call. Our understanding is that when an individual claims that a seller or telemarketer has improperly placed a call to a telephone number that is on the national do not call list, or on a company-specific do not call list, it is the responsibility of the seller to prove that it had the authority to place the call, such as when it has an existing business relationship with the individual being called in the case of the national do not call registry. Because the seller would have this responsibility, we believe that the decision whether to keep a record of a telemarketing call or not should be left to the seller, instead of imposing a blanket requirement that a record be kept of all telemarketing calls.

We appreciate the opportunity to provide these comments.

Sincerely,

J. Kevin A. McKechnie  
Senior Vice President & Director  
Office of Insurance Advocacy