



NATIONAL AUTOMOBILE DEALERS ASSOCIATION  
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**Legal & Regulatory Group**

November 13, 2014

**SUBMITTED ELECTRONICALLY**

Federal Trade Commission  
Office of the Secretary  
600 Pennsylvania Avenue, N.W.  
Suite CC-5610 (Annex B)  
Washington, D.C. 20580  
Electronic address: <https://ftcpubliccommentworks.com/ftc/telemarketingsalesnprm>

**Re: “Telemarketing Sales Rule Regulatory Review, 16 CFR Part 310, Project No.R411011”**

The National Automobile Dealers Association (“NADA”) submits the following comments in response to the request for comments (“Request”) by the Federal Trade Commission (“FTC” or the “Commission”) in connection with its systematic review of the Telemarketing Sales Rule (“Rule”).

NADA represents over 16,000 franchised automobile and truck dealers who sell new and used motor vehicles, and engage in service, repair, and parts sales. Together our members employ in excess of one million people nationwide. NADA is particularly focused on the regulatory burden imposed by the FTC and other federal agencies that promulgate or enforce regulatory requirements affecting our members. We submit these comments because we are concerned about the potential recordkeeping requirement discussed in the Request and the associated burdens that could result from the implementation of such a burden.

It would be difficult, costly, and complicated for dealers to compile and maintain such records. Many automobile dealers are small businesses that do not have access to automated phone systems tied to a computer network that would allow for easy tracking and reporting of such calls. Indeed, such a recordkeeping requirement would necessarily entail manual records kept by dealership employees, which would add tremendous costs for dealers (and ultimately consumers). Dealers would not only need to spend the actual time compiling and maintaining such records, they would also need to take steps to train their employees to ensure compliance, and would likely need to invest in new systems and or software to enable such tracking. Given the various methods by which such calls can be made (landlines, cellular, VoIP, etc.), ensuring

tracking and recordkeeping of all calls made by a dealer will often not be a straightforward exercise, even for larger dealers with automated systems. While a new recordkeeping requirement is described by the Commission as a “simple solution”<sup>1</sup>, we do not believe it would be at all simple in practice.

Dealers engage with the public in almost every department and routinely call customers for any number of reasons connected with the sale and leasing of vehicles, and also with servicing of vehicles and work done in their body shop. The majority of the calls made by dealers are not telemarketing calls, and of the calls that are telemarketing calls, the vast majority do not implicate the Do Not Call Registry. Nevertheless any such requirement would by necessity mean that a dealer would have to maintain records of all calls made since there would be no simple way to determine or delineate whether a call a telemarketing call or not. This would be a very broad and costly solution to address a serious, but relatively limited problem.

While requesting such records from telecommunications service providers – *the very entities whose essential function includes compiling and maintaining a record of all calls made* – may be inefficient, difficult and time-consuming, such difficulties and inefficiencies would only be increased exponentially by imposing a blanket requirement on all companies that may make telemarketing calls to keep accurate and complete records of all calls made.<sup>2</sup> The best answer to the difficulties in obtaining records from the telecommunications companies cannot be to force American businesses to recreate (often manually) and maintain the entire database of phone calls made.

We recognize that the Commission must attempt to balance the additional burden created with the consumer benefit. However, in our view, the limited benefit of a new recordkeeping requirement to consumers on the Do Not Call Registry who receive impermissible telemarketing calls would be far outweighed by the tremendous burden to businesses (and ultimately all consumers) of compiling and maintaining such records, especially given the existing (albeit imperfect) alternatives for obtaining this information. We appreciate the opportunity to comment on this matter.

Sincerely,

/s/

Bradley T. Miller

Associate Director, Legal and Regulatory Affairs

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<sup>1</sup> 79 Fed Reg. 46735.

<sup>2</sup> To the extent that the Commission would envision that such a recordkeeping requirement could be met by the business requesting its own phone records from their telecommunication providers, there is no reason why an individual business would have an experience that is any less “inefficient, difficult [or] time-consuming”, or that a business would not also need to issue “multiple requests to different telecommunication service providers that do not always provide the most useful records.” *Id.* Indeed, there is every reason to believe that an individual business would have far greater difficulty that the Commission in seeking and obtaining this information.