

and other laws. Business and industry commenters generally opposed the proposal, but suggested changes that they believed would make the proposed amendments less burdensome on legitimate business while still achieving the desired consumer protections. Comments from charitable organizations focused primarily on the FTC proposal which would require for-profit telemarketers who solicit on behalf of charitable organizations to comply with the proposed "do-not-call" registry. Charitable organizations consistently opposed such a requirement. The comments and the basis for the Commission's decision on the various recommendations are analyzed in detail in Section II below.

#### *F. The Amended Rule.*

The Commission has carefully reviewed the entire record developed in its rulemaking proceeding. The record, as well as the Commission's law enforcement experience, leave little doubt that important changes have occurred in the marketplace, and that modifications to the original Rule are necessary if consumers are to receive the protections that Congress intended to provide when it enacted the Telemarketing Act. Based on that record and on the Commission's law enforcement experience, the Commission has modified the proposed Rule published in the NPRM and now promulgates this amended Rule, as described in this SBP.

The Commission's decision to retain certain provisions of the original Rule while supplementing or amending others is made pursuant to the Rule Review requirements of the Telemarketing Act,<sup>37</sup> and pursuant to the rulemaking authority granted to the Commission by that Act to protect consumers from deceptive and abusive practices,<sup>38</sup> including practices that may be coercive or abusive of the consumer's interest in protecting his or her privacy.<sup>39</sup> The Commission's decision to amend the original Rule also is made pursuant to the authority granted to the Commission by § 1011 of the USA PATRIOT Act.

As discussed in detail herein, the Commission believes that it is necessary to amend the original Rule to ensure that the Telemarketing Act's goals are met—that is, encouraging the growth of the legitimate telemarketing industry, while curtailing those practices that are abusive or deceptive. The record in this rulemaking proceeding demonstrates

that many of the changes in the marketplace that have occurred since the original Rule was promulgated have led to the growth of deceptive and abusive practices in areas not adequately addressed by the original Rule. The amended Rule addresses these practices by responding to the changes in the marketplace in a manner consistent with the intent of Congress in enacting the Telemarketing Act and § 1011 of the USA PATRIOT Act. The Commission believes that the amended Rule strikes a balance, maximizing consumer protections without imposing unnecessary burdens on the telemarketing industry. Each of the amendments is discussed in detail in this SBP. A summary of the major changes from the original Rule is set forth below. The amended Rule:

- Supplements the current company-specific "do-not-call" provision with a provision that will empower a consumer to stop calls from all companies within the FTC's jurisdiction by placing his or her telephone number on a central "do-not-call" registry maintained by the FTC, except when the consumer has an "established business relationship" with the seller on whose behalf the call is made;
- Permits consumers who have put their numbers on the national "do-not-call" registry to provide permission to call to any specific seller by an express written agreement;
- Explicitly exempts solicitations to induce charitable contributions via outbound telephone calls from coverage under the national "do-not-call" registry provision;
- Modifies § 310.3(a)(3) to require express verifiable authorization for all transactions except when the method of payment used is a credit card subject to protections of the Truth in Lending Act and Regulation Z, or a debit card subject to the protections of the Electronic Fund Transfer Act and Regulation E;
- Modifies § 310.3(a)(3)(iii), the provision allowing a telemarketer to obtain express verifiable authorization by sending written confirmation of the transaction to the consumer prior to submitting the consumer's billing information for payment;
- Mandates disclosures in the sale of credit card loss protection, and prohibits misrepresenting that a consumer needs offered goods or services in order to receive protections he or she already has under 15 U.S.C. § 1643 (limiting a cardholder's liability for unauthorized charges on a credit card account);
- Explicitly mandates that all required disclosures in § 310.3(a)(1) and § 310.4(d) be made truthfully;

- Expands upon the current prize promotion disclosures to include a statement that any purchase or payment will not increase a consumer's chances of winning;
- Prohibits disclosing or receiving, for consideration, unencrypted consumer account numbers for use in telemarketing, except when the disclosure or receipt is to process a payment for goods or services or a charitable contribution pursuant to a transaction;
- Prohibits causing billing information to be submitted for payment, directly or indirectly, without the express informed consent of the customer or donor;
- Sets out guidelines for what evidences express informed consent in transactions involving preacquired account information and "free-to-pay conversion" features;
- Requires telemarketers to transmit the telephone number, and name, when available, of the telemarketer to any caller identification service;
- Prohibits telemarketers from abandoning any outbound telephone call, and provides, in a safe harbor provision, that to avoid liability under this provision, a telemarketer must: abandon no more than three percent of all calls answered by a person; allow the telephone to ring for fifteen seconds or four rings; whenever a sales representative is unavailable within two seconds of a person's answering the call, play a recorded message stating the name and telephone number of the seller on whose behalf the call was placed; and maintain records documenting compliance;
- Extends the applicability of most provisions of the Rule to "upselling" transactions;
- Prohibits denying or interfering in any way with a consumer's right to be placed on a "do-not-call" list;
- Requires maintenance of records of express informed consent and express agreement;
- Narrows certain exemptions of the Rule;
- Clarifies that facsimile transmissions, electronic mail, and other similar methods of delivery are direct mail for purposes of the direct mail exemption; and
- Modifies various provisions throughout the Rule to effectuate expansion of the Rule's coverage to include charitable solicitations, pursuant to Section 1011 of the USA PATRIOT Act, and adds new mandatory disclosures and prohibited misrepresentations in charitable solicitations.

<sup>37</sup> 15 U.S.C. 6108.

<sup>38</sup> 15 U.S.C. 6102(a)(1) and (a)(3).

<sup>39</sup> 15 U.S.C. 6102(a)(3)(A).