

receive his or her specific billing information, including the name of the account and the account number to be charged.³³⁹ These commenters stated that there are dangers inherent in having a telemarketing sales representative recite or receive from the consumer the consumer's full account number over the telephone.³⁴⁰

On the other hand, comments from consumer groups were generally supportive of the expanded disclosures required as a predicate for oral authorization to be deemed verifiable. NCL noted that billing disputes are prevalent in connection with deceptive or abusive telemarketing, and

³³⁹ See, e.g., AFSA-NPRM at 17-18; CCC-NPRM at 12 (recommending § 310.3(a)(3)(ii)(E) be deleted entirely); DialAmerica-NPRM at 27 (noting its support for the disclosure of the account name); Fleet-NPRM at 6; KeyCorp-NPRM at 5; MasterCard-NPRM at 5 (noting that if the provision is not deleted, the amended Rule should at least exempt from compliance entities subject to the privacy provisions of the GLBA); Wells Fargo-NPRM at 3.

³⁴⁰ See, e.g., KeyCorp-NPRM at 5; MasterCard-NPRM at 5. These commenters expressed concern about identity theft and unauthorized charges occurring as a result of the express disclosure of this information. Several commenters noted that consumers are disinclined to provide their account numbers in telemarketing, in part due to the success of consumer protection education campaigns that have stressed that a consumer should only provide his or her account number in telemarketing if the consumer knows the seller with whom he or she is dealing. See, e.g., Bank One-NPRM at 4; Cendant-NPRM at 7; Household Auto-NPRM at 2-3; VISA-NPRM at 6-7. Some commenters noted that marketers will not have such account numbers in some instances, such as in preacquired account telemarketing involving a joint marketing program, and thus will be unable to ensure the customer's "receipt" of this information. See, e.g., Household Auto-NPRM at 4; NEMA-NPRM at 8-10 (noting that the "receipt" language directly contradicts the NEMA's guidelines to ensure that the customer "disclose" such information before processing a charge, and will result in duplicative information being exchanged); Green Mountain-NPRM at 26 (requesting an exemption because the energy industry is highly regulated). As discussed below, the Commission decided to delete the requirement that the account number be disclosed, and therefore the Commission anticipates that this will ameliorate the concern about preacquired account telemarketing. In every instance, the seller or telemarketer should be able to tell the customer or donor the name of the billing vehicle and enough other information to ensure that the customer or donor knows what account will be used to collect payment. As to NEMA's and, to some extent, Green Mountain's concern about redundancy, it is true that in a non-preacquired account call, some information, such as the customer's or donor's billing information, will initially be unknown to the telemarketer. It is equally true that some of the information a customer must receive under § 310.3(a)(3)(ii) is known only to the telemarketer, such as the date a charge will be submitted for payment and a customer or donor service number. The Commission believes that, for payment methods that are novel and lacking in certain consumer protections, it is critical for the customer to authorize the payment. If a seller or telemarketer chooses the express oral authorization method, then it is incumbent upon them to ensure that a consumer receives this information, even if redundant, as part of the recorded authorization.

complaints about such disputes often arise when a consumer has been duped into providing his or her billing information for some bogus purpose, such as "verification," or to enable the seller purportedly to deposit sweepstakes winnings to the consumer's account.³⁴¹ NCL also noted that consumers may provide their account information in conjunction with a payment for a particular item, but then be billed for additional goods or services that they did not authorize.³⁴² Based on its experience, NCL "believes that it is important to verify both the account that will be billed and the fact that the consumer is agreeing to purchase specific products or services using that account."³⁴³ NAAG concurred, stating that the proposed Rule's express requirements to recite the account name and number would be beneficial to consumers who, as law enforcement experience demonstrates, may otherwise be unaware of this critical information.³⁴⁴

Based on the record, the Commission has decided to modify the proposed provision to limit the required amount of information about an account that must be received by a customer or donor to comply with the express verifiable authorization provision. The amended Rule requires that the customer or donor receive "billing information, identified with sufficient specificity that the customer or donor understands what account will be used to collect payment for the goods or services or charitable contribution."³⁴⁵ This more flexible standard takes into account concern about identity theft, but still mandates that the customer receive information sufficient to understand what account is being used to process payment for the transaction. It will allow telemarketers the option to state, for example, the name and the last four digits of the account to be charged, rather than the full account number.

Written confirmation. The Commission received several comments regarding its proposal to delete § 310.3(a)(3)(iii) from the Rule. This section of the original Rule allows a

seller or telemarketer to obtain express verifiable authorization by sending written confirmation of the transaction to the customer prior to submitting the customer's billing information to be charged. In general, industry commenters opposed the Commission's proposal to delete this provision from the Rule, arguing that, contrary to the evidence presented during the Rule Review, this method of authorization is commonly used in telemarketing.³⁴⁶ Aegis noted that there is nothing "inherently fraudulent, abusive, or problematic" with this method of obtaining express verifiable authorization, and urged the Commission to retain it.³⁴⁷ Industry commenters urged the Commission to retain this provision, especially because it provides a low-cost alternative to recording a customer's oral authorization.³⁴⁸

Consumer groups and law enforcement officials expressed their support for deleting this provision from the Rule, or modifying it to ensure that consumers are better protected when this method is used.³⁴⁹ NAAG, for example, noted the potential danger inherent in the written confirmation provision as it is worded in the original Rule. Specifically, NAAG opined that consumers are likely to overlook a confirmation that appears to be yet

³⁴⁶ See, e.g., ARDA-NPRM at 5 (noting that the written confirmation method may actually increase in popularity if the additional requirements during oral authorization are adopted in a final Rule); ARDA-Supp. at 1 (noting that the Rule should allow for flexibility given the rapid technological changes in payment methods); CCC-NPRM at 14 (asserting that "this method is readily available, straightforward, reliable and is currently used by many marketers."); CNHI-NPRM at 1 (noting that eliminating this method would place newspapers at "an unfair competitive disadvantage"); EFSC-NPRM at 8; NAA-NPRM at 16 ("many newspapers regularly and legitimately used this method" and would incur considerable expense using the written or oral authorization methods instead).

³⁴⁷ Aegis-NPRM at 4. *Accord* Noble-NPRM at 4 (arguing there is nothing inherently fraudulent about this method of authorization); PMA-NPRM at 20 (suggesting that the record does not support elimination of this method of authorization); Technion-NPRM at 5 (arguing there is nothing "wrong with" this method of authorization).

³⁴⁸ See, e.g., Capital One-NPRM at 8; Gannett-NPRM at 1; Intuit-NPRM at 19-20; MPA-NPRM at 27; PMA-NPRM at 20 (urging that this method be retained in part to reduce costs for inbound call centers who, under proposed revisions to address upselling, would need to conduct express verifiable authorization and may not be equipped to do so by taping); June 2002 Tr. III at 40-42 (CCC, noting that written confirmation "is the cheapest way of effectuating a transaction;" ERA, stating that reinstating the written confirmation method will "help balance the additional costs" incurred due to the expansion of the express verifiable authorization requirement).

³⁴⁹ See, e.g., NAAG-NPRM at 49.

³⁴¹ NCL-NPRM at 4.

³⁴² *Id.*

³⁴³ *Id.*

³⁴⁴ NAAG-NPRM at 48-49.

³⁴⁵ Amended Rule § 310.3(a)(3)(ii)(E). The requirement that the account be identified with sufficient specificity that the customer or donor understands what account will be used to collect payment mirrors the provision in amended Rule § 310.4(a)(6)(ii)(A), requiring that, in telemarketing transactions involving preacquired account information, a seller or telemarketer obtain express informed consent by identifying the account to be charged with specificity such that the customer or donor understands what account will be charged.