

provision.⁴⁸⁹ Fifth, law enforcement groups will benefit from a vital new resource from the required transmission of Caller ID information in telemarketing.⁴⁹⁰

Background. The original Rule did not address the issue of Caller ID, or the feasibility or desirability of requiring telemarketers to transmit Caller ID information. During the Rule Review, however, the Commission received numerous comments from consumers and others expressing frustration about telemarketers' routine failure to transmit Caller ID information.⁴⁹¹ Commenters complained that when telemarketers called, consumers' Caller ID devices would show a phrase like "unknown," "out of area," or "unavailable," instead of displaying the name and telephone number of the telemarketer or seller on whose behalf the call was made.⁴⁹² Based on the Rule Review record, the Commission proposed in the NPRM to prohibit blocking, circumventing, or altering the transmission of Caller ID information.⁴⁹³

In support of this proposal, the Commission discussed in the NPRM the benefits that accrue to consumers from transmission of Caller ID information and the technical considerations implicated by transmission of this information.⁴⁹⁴ Consumers benefit because Caller ID information allows them to screen out unwanted callers and identify companies that have contacted them so that they can place "do not call" requests to those companies. These features of Caller ID enable consumers to protect their privacy and are clearly within the ambit of the Telemarketing Act's mandate, set forth in 15 U.S.C. § 6302(a)(3)(A), to prohibit telemarketers from undertaking a pattern of unsolicited telephone calls which a reasonable consumer would consider coercive or abusive of their right to privacy.⁴⁹⁵ The fact that consumers

greatly value the privacy protection provided by receipt of Caller ID information is evidenced by the fact that, as of the year 2000, nearly half of all Americans subscribed to a Caller ID service.⁴⁹⁶

The Commission noted in the NPRM the conflict in opinion during the Rule Review regarding the feasibility of requiring Caller ID transmission by telemarketers.⁴⁹⁷ Based on its assessment of the information on the record at the close of the Rule Review, the Commission expressed its uncertainty that telemarketers using "T-1" trunk lines could transmit Caller ID information, and the Commission therefore did not at that time propose to mandate such transmission.⁴⁹⁸ The NPRM also acknowledged telemarketers' argument that, even if they could transmit Caller ID information, they would still face the challenge of transmitting a number that would be useful to consumers.⁴⁹⁹

The Commission received numerous comments in response to the NPRM's discussion of Caller ID. Some industry representatives simply posited that transmission of Caller ID information was not possible, or argued that it was possible to transmit a telephone number, but that it was impossible or prohibitively expensive to transmit a telephone number that consumers could use to call the telemarketer that had called them.⁵⁰⁰ Consumer groups and law enforcement representatives urged the Commission not to accept telemarketers' claims that mandatory Caller ID transmission is impossible or prohibitively expensive without carefully examining the technical considerations involved.⁵⁰¹ A number of consumers expressed frustration with

transmission. DMA-NPRM at 48-49. However, the NPRM clearly explains that the harm to consumers that arises from failure to transmit Caller ID information falls within the areas of abuse that the Telemarketing Act explicitly aimed to address. 67 FR at 4514-16. The Commission therefore rejects DMA's "lack of authority" argument.

⁴⁹⁶ Dina ElBoghdady, *Ears Wide Shut: Researchers Get Punished for Telemarketers' Crimes*, WASH. POST, Sept. 8, 2002, at H 2.

⁴⁹⁷ 67 FR at 4515.

⁴⁹⁸ *Id.*

⁴⁹⁹ *Id.* Some telemarketers asserted that the telephone number that would likely be displayed on consumers' Caller ID services would be the telemarketer's central switchboard or trunk exchange, rather than a customer service number or a number where consumers could submit a "do not call" request.

⁵⁰⁰ ANA-NPRM at 6; Associations-NPRM at 3; DMA-NPRM at 49; NAA-NPRM at 17; Nextel-NPRM at 25; Synergy Solutions-NPRM at 3-4; Teledirect-NPRM at 3; Associations-Supp. at 7. *See also* AFSA-NPRM at 19; Assurant-NPRM at 6. *But see* EPIC-NPRM at 11, 13; NAAG-NPRM at 45.

⁵⁰¹ EPIC-NPRM at 11-12; NAAAG-NPRM at 45; AARP-NPRM at 5-6.

telemarketers who fail to transmit Caller ID information.⁵⁰²

Industry commenters generally supported the proposed prohibition on blocking Caller ID, but urged the Commission not to *require* Caller ID transmission,⁵⁰³ although one telemarketer very strongly advocated that the Commission do so in order to remove the cloak of anonymity from telemarketers and thus promote accountability for the greater benefit of the industry as a whole.⁵⁰⁴ A number of industry commenters wanted to make sure that "the prohibited practice is the deliberate manipulation of the Caller-ID signal" and that "[a]s long as no overt actions are taken to disrupt the information, there is no violation."⁵⁰⁵ Several commenters expressly urged that purchasing or using telephone equipment that lacks Caller ID functionality should not be a violation of the Rule.⁵⁰⁶

Technical feasibility of mandatory transmission of Caller ID information. The rulemaking record as a whole shows that telemarketers' failure to transmit Caller ID information need not be the result of their blocking its transmission or some other affirmative measure on their part.⁵⁰⁷ Rather, the record indicates that non-transmission

⁵⁰² *See, e.g.*, Robert Hawrylak (Msg. 3382); Carl Wallander (Msg. 861); George Kapnas (Msg. 2243); Tom Kaufmann (Msg. 2433); Bob Schmitt (Msg. 3494); Bradley Davis (Msg. 3890); Toryface (Msg. 19744). In all, more than 200 consumers stated that the Commission's proposed approach in the NPRM was not adequate to protect consumers' right to privacy.

⁵⁰³ ABA-NPRM at 9; ARDA-NPRM at 6; ANA-NPRM at 6; Associations-NPRM at 3; BofA-NPRM at 7; CBA-NPRM at 10; Comcast-NPRM at 4; DMA-NPRM at 48; ERA-NPRM at 48-49; Green Mountain-NPRM at 27; ITC-NPRM at 3; Lenox-NPRM at 6; MPA-NPRM at 49; NAA-NPRM at 17; Nextel-NPRM at 24-25; Synergy Solutions-NPRM at 3-4; Tribune-NPRM at 10; VISA-NPRM at 13. In the NPRM, the Commission specifically asked, among other things, whether it would "be desirable to propose a date in the future by which all telemarketers would be required to transmit Caller ID information." 67 FR at 4538.

⁵⁰⁴ DialAmerica-NPRM at 24; DialAmerica-Supp. at 10; June 2002 Tr. II at 83 (DialAmerica).

⁵⁰⁵ Synergy Solutions-NPRM at 3. *See also* Nextel-NPRM at 25; Noble-NPRM at 4; NATN-NPRM at 4; NSDI-NPRM at 4; ITC-NPRM at 3.

⁵⁰⁶ AFSA-NPRM at 19; Comcast-NPRM at 4; CBA-NPRM at 10; Cox-NPRM at 37; Household Bank-NPRM at 16; Nextel-NPRM at 25; Thayer-NPRM at 5; Wells Fargo-NPRM at 3. *But see* EPIC-NPRM at 11, 13-14; McClure-NPRM at 1; Patrick-NPRM at 2-3; Thayer-NPRM at 5 (Commenter raises issue of whether Internet telephony users could transmit Caller ID information. There is nothing in the record indicating that telemarketers use Internet telephony. If they do use such technology, they are reminded that all telemarketers subject to the Rule must transmit Caller ID information. The FTC's own telephone system uses IP telephones, which do provide Caller ID information.).

⁵⁰⁷ ATA-Supp. at 16-17; Chicago ADM-NPRM at 1; Lenox-NPRM at 6; NRF-NPRM at 19.

⁴⁸⁹ Make-A-Wish-NPRM at 6; Associations-Supp. at 7; DialAmerica-Supp. at 2.

⁴⁹⁰ Make-A-Wish-NPRM at 6; McClure-NPRM at 2; NACAA-NPRM at 9; NYSCPB-NPRM at 4; Patrick-NPRM at 2-3; TRA-NPRM at 11.

⁴⁹¹ *See, e.g.*, Baressi-RR at 1; Bell Atlantic-RR at 8; Blake-RR at 1; Collision-RR at 1; Lee-RR at 1; LeQuang-RR at 1; Mack-RR at 1; Sanford-RR at 1.

⁴⁹² *See, e.g.*, Baressi-RR at 1; Blake-RR at 1; Collision-RR at 1; Lee-RR at 1; LeQuang-RR at 1; Mack-RR at 1; Sanford-RR at 1.

⁴⁹³ The Caller ID provision is found at § 310.4(a)(7) of the proposed Rule; discussion of the proposed Rule provision is found at 67 FR at 4514-16.

⁴⁹⁴ 67 FR at 4514-16. The Commission also asked whether trends in telecommunications might one day permit the transmission of full Caller ID information when the caller uses a trunk line or PBX system. *Id.* at 4538.

⁴⁹⁵ 67 FR at 4514. DMA argued that the Commission lacks authority to require Caller ID