

the Caller ID data but forwarding the rest of the call transmission.<sup>523</sup> Second, a malfunction within a carrier's system could result in the failure to transmit Caller ID information in a given call.<sup>524</sup> Because these phenomena are outside the control of the telemarketer, the telemarketer would not be held liable for violating this provision of the Rule when the failure to transmit Caller ID information results from such an occurrence. However, to avoid liability in such a case, a telemarketer must be able to establish that it has taken all available steps to "transmit or cause the transmission of" identifying information. This includes employing technical means within the telemarketer's operation, ensuring that the telemarketer's telephone company is equipped to transmit Caller ID information, and not using any means to block Caller ID transmission.

A very small number of telemarketers may be located in areas of the country that are served only by telephone companies that are not capable of transmitting Caller ID information or assigning a telephone number to the telemarketer that can be transmitted to a called consumer.<sup>525</sup> The Commission does not intend to require such telemarketers to relocate to areas of the country that are served by telephone companies that do provide Caller ID capability. Nonetheless, in enforcing this provision, the Commission would take into account any telemarketer's relocation from an area where it can transmit Caller ID information to a location where it cannot. However, the Commission believes it is unlikely that a telemarketer would go to such lengths in order to avoid compliance with this new requirement.

The Commission recognizes that transmission of Caller ID information does not depend on technical capability alone. Telemarketers who currently possess Caller ID capability may deliberately decline to transmit this information to the consumers they solicit. There is record evidence to support legitimate explanations for deliberate blocking of Caller ID

transmission.<sup>526</sup> Fiber Clean, for example, uses telemarketers working from home; it advocates Caller ID blocking to protect its employees' privacy.<sup>527</sup> Other telemarketers may block Caller ID transmission because they are unable to transmit a telephone number which would be useful to consumers.<sup>528</sup>

The Commission has concluded that some flexibility regarding what telephone number and name the telemarketer may transmit best accommodates the current state of telemarketing.<sup>529</sup> A telemarketing service bureau calling on behalf of more than one seller, for example, may benefit from the option of transmitting the seller's name and telephone number rather than its own.<sup>530</sup> Under § 310.4(a)(7), telemarketers have the option of transmitting a telephone number associated with them that enables the consumer to identify who called, or, in the alternative, the seller's customer service number or the charitable organization's donor service number. If the telemarketer transmits its own number, that number ideally should enable the consumer to communicate with the caller to assert a company-specific "do not call" request. Alternatively, telemarketers can forward consumers' return calls to a customer service line.<sup>531</sup> At-home callers with a POTS line cannot alter, but they can acquire a second line for business calls, which would allay privacy concerns associated with transmission of the caller's residential number.

*Consumers benefit from transmission of Caller ID information.* The record, taken as a whole, establishes that it is neither technically nor economically infeasible for telemarketers to transmit Caller ID information. On the other side of the equation, consumers derive

substantial benefit from receiving Caller ID information. Moreover, as the Commission explained in the NPRM, the transmission of Caller ID information is necessary to protect consumers' privacy under the Telemarketing Act.<sup>532</sup> Consumers in large numbers subscribe to, and pay for, Caller ID services offered by their telephone companies.<sup>533</sup> Many of these consumers subscribe to Caller ID specifically to identify incoming calls from telemarketers and screen out unwanted telemarketing calls.<sup>534</sup> Indeed, according to Private Citizen, consumers spend an aggregate of \$1.4 billion annually on Caller ID services to limit unwanted telemarketing calls.<sup>535</sup> Consumers who commented on the record expressed frustration at the failure of telemarketers to provide Caller ID information.<sup>536</sup> These consumers have, over time, come to the conclusion that an incoming call that fails to provide Caller ID information is commonly a telemarketing call.<sup>537</sup> As a result, some consumers decline to answer these calls.<sup>538</sup> In an attempt to protect their privacy from incoming calls with no Caller ID information provided, other consumers have gone beyond call screening with services such as Caller Intercept and Privacy Manager, both of which are offered by telephone companies for a fee, that intercept incoming calls with no Caller ID information and require such callers to identify themselves before their call will be connected.<sup>539</sup> At present, Caller ID services are an ineffective solution from consumers' perspective: many

<sup>532</sup> 67 FR at 4514.

<sup>533</sup> Dina ElBoghdady, *Ears Wide Shut: Researchers Get Punished for Telemarketers' Crimes*, WASH. POST, Sept. 8, 2002, at H2 (Noting that, according to a survey conducted in 2000, nearly half of all Americans subscribe to caller ID); ACUTA-NPRM at 2.

<sup>534</sup> McClure-NPRM at 3; Private Citizen-NPRM at 2; Susannah Fox (Msg. 3624), CN Rhodine (Msg. 480), Gautham Achar (Msg. 596), Brenda Hall (Msg. 825), Carl Wallander (Msg. 861). *See also* 67 FR at 4515, n.223 (citing Bell Atlantic survey finding that three out of four residential customers buy Caller ID to help stop abusive telephone calls).

<sup>535</sup> Private Citizen-NPRM at 2. *See also* Associated Press, *Phone Companies Act as Double Agents in Telemarketing War*, CHI. TRIB., Oct. 27, 2002, at C4.

<sup>536</sup> *See, e.g.*, Robert Hawrylak (Msg. 3382), Patricia Frank (Msg. 223), Jo Ann Kilmer (Msg. 530), Jim Kelly (Msg. 541), Carl Wallander (Msg. 861), John G. Talaious (Msg. 1236), Louis Sarvary (Msg. 1319), George M. Kapnas (Msg. 2243), Bob Greene (Msg. 2716), FarmGirl16F3 (Msg. 14015).

<sup>537</sup> *See, e.g.*, Karen Peters (Msg. 3814), Chuck Jackson (Msg. 209).

<sup>538</sup> *See, e.g.*, E Pereira (Msg. 214), Brenda Hall (Msg. 825), Victoria Brigman (Msg. 3889).

<sup>539</sup> *See, e.g.*, [http://www22.verizon.com/ForYourHome/SAS/res\\_fam\\_identify.asp](http://www22.verizon.com/ForYourHome/SAS/res_fam_identify.asp); Private Citizen-NPRM at 2; DC-NPRM at 5; EPIC-NPRM at 11; McClure-NPRM at 2.

<sup>523</sup> ATA-Supp. at 16; SBC-Supp. at 13.

<sup>524</sup> SBC-Supp. at 13.

<sup>525</sup> The record reflects that with the exception of some small interexchange carriers ("IXCs"), competitive local exchange carriers ("CLECs"), and some incumbent local exchange carriers ("ILECs") serving rural pockets of the country, all telephone companies can pass along Caller ID information. *See* June 2002 Tr. II at 78-79; FCC First Report and Order in the Matter of Access Charge Reform, CC Docket No. 96-262 (May 7, 1997), para. 137; <http://www.ss7.net>: Carriers connected to the Signaling System 7 ("SS7") network can transmit Caller ID information. SS7 is the predominant signaling system, and its use is increasing. *But see* Green Mountain-NPRM at 28.

<sup>526</sup> Fiber Clean-NPRM at 1; Cox-NPRM at 37-38; NRF-NPRM at 19. *But see* ERA-NPRM at 48; Teledirect-NPRM at 3; ATA-Supp. at 16.

<sup>527</sup> Fiber Clean-NPRM at 1.

<sup>528</sup> Cox-NPRM at 37-38; NRF-NPRM at 19.

<sup>529</sup> ARDA-NPRM at 6; Assurant-NPRM at 6; ATA-Supp. at 16; DMA-NPRM at 50; ERA-NPRM at 49; IMC-NPRM at 8; MPA-NPRM at 9, 49-50. *See also* Assurant-NPRM at 6 (Commenter asked that the Rule do more to prevent transmission of misleading Caller ID information. The Commission believes that the amended Rule addresses this concern.). *But see* AARP-NPRM at 6; NCL-NPRM at 8; Patrick-NPRM at 10 (telemarketer should be required to transmit the seller's name whenever possible). *See also* EPIC-NPRM at 12; Make-A-Wish-NPRM at 5-6; Worsham-NPRM at 4 (telemarketer should identify itself rather than the seller). *See also* BellSouth-NPRM at 4-5 (no flexibility in transmitted number should be permitted).

<sup>530</sup> MPA-NPRM at 9; DMA-NPRM at 50. *See also* Green Mountain at 28; ATA-Supp. at 16.

<sup>531</sup> DialAmerica provides a model for the use of call forwarding in this context. *See* DialAmerica-Supp., Att. A at 2.