

consumers pay added costs simply to find out who is calling them, yet this investment is useless when the identifying information is not made available.<sup>540</sup>

With the exception of Fiber Clean, which argued in favor of allowing at-home telemarketers to block Caller ID transmission, comments from industry members on the whole did not argue that telemarketers have a reason to block Caller ID transmission which might override the substantial privacy protection afforded to consumers when their Caller ID service shows them who is calling.<sup>541</sup> To the contrary, comments from industry members supported the privacy principle behind the Rule's Caller ID provision, but took issue with the proposition that they should be required to transmit or cause transmission of Caller ID information.<sup>542</sup> Therefore, there is strong support for the Commission's position that requiring Caller ID transmission in telemarketing calls will help promote consumers' privacy by allowing them to know who is calling them at home.

Transmission of Caller ID information will also promote accountability throughout the industry—a goal championed by consumers<sup>543</sup> and industry members<sup>544</sup> alike. The Commission is persuaded by the argument DialAmerica presented in favor of requiring transmission of Caller ID in telemarketing calls. According to DialAmerica: “[d]elivery of Caller ID information, that will be displayed on a consumer's Caller ID device or that can be accessed through such services as \*69, is essential to create accountability in the outbound telemarketing industry.”<sup>545</sup>

<sup>540</sup> AARP-NPRM at 5; EPIC-NPRM at 11; McClure-NPRM at 3. *But see* Lynn Gaubatz (Msg. 2769) (Consumer prefers current state of affairs where “most” telemarketers block transmission of Caller ID information because her Caller ID is programmed to refuse calls from parties who block such transmission. Using this arrangement, the consumer reports receiving few telemarketing calls.).

<sup>541</sup> Several comments from industry groups asserted that the Commission should yield to the FCC's standard on Caller ID blocking, under which the calling party's ability to block Caller ID transmission is preserved. *See, e.g.*, DMA-NPRM at 48-49; SBC Supp. at 10-11. As is discussed below, however, the concerns at stake in the FCC's regulation—law enforcement and safety—are not implicated by telemarketing calls.

<sup>542</sup> DMA-NPRM at 48; IMC-NPRM at 8.

<sup>543</sup> *See, e.g.*, Teresa Vargas (Msg. 1292) (“I think telemarketers should NOT be able to block their phone numbers on Caller ID screens or \*69. This will make the telemarketers more accountable, particularly if their tactics are in violation of a “do-not-call” request or if, [sic] the telemarketers successfully scam consumers.”); Lisa Bellanca (Msg. 2007).

<sup>544</sup> *See, e.g.*, DialAmerica-Supp. at 2; June 2002 Tr. II at 91-92 (ERA).

<sup>545</sup> DialAmerica-Supp. at 2.

Commenters noted that the increase in accountability that would accrue from requiring transmission of Caller ID information in telemarketing would provide particular benefit in addressing abandoned calls.<sup>546</sup> Consumers whose privacy has been abused by dead air and call abandonment find it difficult, if not impossible, to ascribe those practices to a particular telemarketer unless Caller ID information is provided.<sup>547</sup> As explained by DialAmerica, mandatory transmission of Caller ID information will provide “a strong incentive for companies to keep abandonment rates low and eliminate ‘dead air,’” as these companies do not want to engage in practices that might encourage consumers to invoke their company-specific “do-not-call” rights.<sup>548</sup>

The enhanced accountability provided by Caller ID transmission extends beyond complaints about call abandonment and dead air. Caller ID information provides a record of identification that endures beyond the telemarketing call. The prompt disclosures required by 310.4(d) provide consumers with a needed introduction to a solicitation call, but do not provide an enduring record of identifying information, as most consumers do not answer the phone with pen and paper at the ready to write down the name of the calling party. Moreover, just as industry comments did not dispute the privacy protections provided by Caller ID transmission, neither did they present a rebuttal to the argument that such transmission will promote accountability in telemarketing. Indeed, the large majority of telemarketers—entities built upon good business practices and compliance with the Rule—will benefit from a provision designed to respond to deceptive and abusive practices aided by anonymity in telemarketing.<sup>549</sup>

By eliminating anonymity in telemarketing, the Caller ID provision will serve a third, equally important goal: it will provide law enforcement with a significant new resource.<sup>550</sup> In the years following promulgation of the original Rule, the Commission and the states have created a substantial record of enforcement.<sup>551</sup> However,

enforcement efforts concerning some Rule provisions have been frustrated because of difficulty in identifying violators.<sup>552</sup> Sellers and telemarketers that have failed to honor “do-not-call” requests have been particularly hard to identify.<sup>553</sup> A number of comments in the record noted the need for greater ability to identify possible violators, and the advantages of Caller ID information in filling that need.<sup>554</sup> AARP noted that required transmission of Caller ID information will also enable consumers to contact government agencies and the Better Business Bureau to verify the legitimacy of the telemarketer, which will help to prevent fraud before it occurs.<sup>555</sup> Therefore, the transmission of Caller ID information likely will aid law enforcement's ability to enforce the TSR, and increase the Rule's effectiveness.

*Consistency with FCC regulations.* FCC regulations require carriers using SS7<sup>556</sup> to provide a mechanism by which a line subscriber can block the display of his or her telephone number on a Caller ID device.<sup>557</sup> SBC referenced the FCC's approach to Caller ID blocking to argue that calling parties' interest in privacy “outweighs the general usefulness of Caller ID service.”<sup>558</sup> As the NPRM made clear, the FCC's requirement that common carriers be able to allow Caller ID blocking is meant to address specific calling situations in which protecting the calling party's privacy takes on particular urgency.<sup>559</sup> Cited examples include undercover law enforcement operations and calls placed from battered women's shelters.<sup>560</sup> No such privacy justification suggests itself in the case of telemarketers. Moreover, there is no conflict between the amended Rule's Caller ID provision and FCC regulations. The FTC's provision requires sellers and telemarketers to transmit Caller ID information; it does not create an obligation or a prohibition for common carriers. FCC regulations require certain carriers to provide a mechanism for blocking display of Caller ID information; they do not grant

<sup>552</sup> June 2002 Tr. II at 21.

<sup>553</sup> Donald Munson (Msg. 25516); EPIC-NPRM at 11; NYSCPB-NPRM Att. A at 4-5.

<sup>554</sup> DialAmerica-NPRM at 25-26; EPIC-NPRM at 11-12; Patrick-NPRM at 2-3; TRA-NPRM at 11; CN Rhodine (Msg. 480); Charles Goodwin (Msg. 2079); Donald Munson (Msg. 25516).

<sup>555</sup> AARP-NPRM at 6.

<sup>556</sup> *See* note 526 above for more on SS7 technology.

<sup>557</sup> 47 CFR 64.1601.

<sup>558</sup> SBC-Supp. at 10-11.

<sup>559</sup> 67 FR at 4515, n.228. *See also* ATA-Supp. at 16; EPIC-NPRM at 14.

<sup>560</sup> *Id.*

<sup>546</sup> DialAmerica-NPRM at 25; Sytel-NPRM at 8; AARP-NPRM at 9; ARDA-NPRM at 15.

<sup>547</sup> <http://www.opc-marketing.com/predictive.htm> (“[I]t is assumed that abandoned calls to anonymous consumers do not harm the call center's business.”).

<sup>548</sup> DialAmerica-Supp. at 3.

<sup>549</sup> *See, e.g.*, AARP-NPRM at 6.

<sup>550</sup> TRA-NPRM at 11; EPIC-NPRM at 11-12.

<sup>551</sup> FTC law enforcement actions alone total over 139 cases, resulting in total judgments of over \$200 million since the Rule's inception.