

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE NO. 06-61851-CIV-UNGARO/O’SULLIVAN

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

RANDALL L. LESHIN, RANDALL L.
LESHIN, P.A., also d/b/a EXPRESS
CONSOLIDATION, INC., EXPRESS
CONSOLIDATION, INC., CONSUMER
CREDIT CONSOLIDATION, INC., and
MAUREEN A. GAVIOLA,

Defendants.

_____ /

STIPULATED INTERIM ORDER

Whereas, Plaintiff Federal Trade Commission (“Commission” or “FTC”) has filed a Complaint for Injunctive and Other Equitable Relief, including consumer redress, to address Defendants’ alleged violations of Sections 5(a), 13(b), and 19 of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. §§ 45(a), 53(b), and 57b, and the Telemarketing and Consumer Fraud and Abuse Prevention Act (“Telemarketing Act”), 15 U.S.C. §§ 6101-6108;

Whereas, the Commission has also moved for a temporary restraining order and a preliminary injunction and the parties wish to resolve the pending motions by agreeing to the terms of this Interim Order;

Whereas, Defendants deny any wrongdoing based on the allegations of the Complaint and deny the allegations set forth in the FTC’s motions; and

Whereas, Defendant Maureen A. Gaviola has voluntarily agreed to prepare and deliver to counsel for the Commission a completed financial statement on the forms attached to this Order as Attachment A (Financial Statement of Individual Defendant), upon a written request from the Commission asking for the Financial Statement as an initial step toward resolution of this matter, and Defendant Maureen Gaviola will provide the completed Financial Statement no later than three weeks after receipt of the written request. The parties agree that:

- 1) This Court has jurisdiction of the subject matter of this case for purposes of this interim order and enforcement thereof. This Order shall not be deemed to be a waiver of any defenses, including without limitation that the FTC has no standing or enforcement authority over defendants under Sec. 4 of the FTC Act or the Telemarketing Act, however such specific defense shall not be a defense to enforcement of this Order.
- 2) This order is solely for the purpose of resolving the pending motions and does not constitute and shall not be interpreted to constitute any admission by any of the Defendants that they engaged in violations of any law or regulation, or that the facts alleged in the complaint or other pleadings are true, and shall not constitute or be interpreted to constitute approval or endorsement by the Commission of any practices of the Defendants, past or prospective.

DEFINITIONS

For the purpose of this Order, the following definitions shall apply:

- 1) “Corporate Defendants” means Express Consolidation, Inc., Randall L. Leshin, P.A., and Consumer Credit Consolidation, Inc.
- 2) “Defendants” means all of the Corporate Defendants and Defendants Randall L. Leshin and Maureen A. Gaviola, individually, collectively, or in any combination, and whether

acting directly or through an assign, agent, proxy, or nominee., individually, collectively, or in any combination, and their officers, agents, servants, employees, and attorneys.

- 3) "Assets" means all real and personal property of any Defendant, or held for the benefit of any Defendant, including, but not limited to, "goods," "instruments," "equipment," "fixtures," "general intangibles," "inventory," "checks," "notes," and "securities" (as these terms are defined in the Uniform Commercial Code), lines of credit, and all cash, wherever located.
- 4) "Assisting others" means providing any of the following goods or services to another person: (i) serving as an officer, director, or consultant; (ii) performing customer service functions, including, but not limited to, receiving or responding to customer complaints; (iii) formulating or providing, or arranging for the formulation or provision of, any script or any other material for communicating with customers or potential customers; (iv) providing names of, or assisting in the generation of contacts to, potential customers, including, but not limited to, arranging for the automated delivery of messages to potential customers; (v) performing marketing services of any kind; or (vi) providing any other substantial help or aid, while knowing or consciously avoiding knowing that the person receiving assistance is engaged in an act or practice that is prohibited by this Order.
- 5) "Billing information" means any data that enables any person to access a customer's or donor's account, such as a credit card, checking, savings, share or similar account, utility bill, mortgage loan account, or debit card account.
- 6) "Debt consolidation service" means:
 - 1) receiving money from a consumer for the purpose of distributing one or more payments to or among one or more creditors of the consumer in full or partial

- payment of the consumer's obligation;
- 2) arranging or assisting a consumer to arrange for the distribution of one or more payments to or among one or more creditors of the consumer in full or partial payment of the consumer's obligation;
 - 3) exercising direct or indirect control, or arranging for the exercise of such control, over funds of a consumer for the purpose of distributing payments to or among one or more creditors of the consumer in full or partial payment of the consumer's obligation; or
 - 4) acting or offering to act as an intermediary between a consumer and one or more creditors of the consumer for the purpose of adjusting, settling, discharging, reaching a compromise on, or otherwise altering the terms of payment of the consumer's obligation.
- 7) "Document" is equal in scope and synonymous in meaning to the usage of the term in Federal Rule of Civil Procedure 34(a), and includes writings, drawings, charts, graphs, photographs, audio and video recordings, computer records, and any other data compilations from which information can be obtained.
- 8) "Established business relationship" means a relationship between a seller and a person based on: (1) the person's purchase, rental, or lease of the seller's goods or services or a financial transaction between the person and seller, within the eighteen (18) months immediately preceding the date of a telemarketing call; or (2) the person's inquiry or application regarding a product or service offered by the seller, within the three (3) months immediately preceding the date of a telemarketing call.

- 9) “National Do Not Call Registry” means the National Do Not Call Registry maintained by the Federal Trade Commission pursuant to 16 C.F.R. § 310.4(b)(1)(iii)(B).
- 10) “Outbound telephone call” means a telephone call initiated by a telemarketer to induce the purchase of goods or services or to solicit a charitable contribution.
- 11) “Person” means any individual, group, unincorporated association, limited or general partnership, corporation, or other business entity.
- 12) “Seller” means any person who, in connection with a telemarketing transaction, provides, offers to provide, or arranges for others to provide goods or services to the customer in exchange for consideration, whether or not such person is under the jurisdiction of the Federal Trade Commission.
- 13) “Telemarketer” means any person who, in connection with telemarketing, initiates or receives telephone calls to or from a customer or donor.
- 14) “Telemarketing” means a plan, program, or campaign which is conducted to induce the purchase of goods or services or a charitable contribution, by use of one or more telephones and which involves more than one interstate telephone call. The term does not include the solicitation of sales through the mailing of a catalog which contains a written description or illustration of the goods or services offered for sale; includes the business address of the seller; includes multiple pages of written material or illustrations; and has been issued not less frequently than once a year, when the person making the solicitation does not solicit customers by telephone but only receives calls initiated by customers in response to the catalog and during those calls takes orders only without further solicitation. For purposes of the previous sentence, the term “further solicitation” does not include providing the customer with

information about, or attempting to sell, any other item included in the same catalog which prompted the customer's call or in a substantially similar catalog.

15) "Telemarketing Sales Rule" or "Rule" means the FTC Rule entitled "Telemarketing Sales Rule," 16 C.F.R. Part 310.

ORDER

I.

IT IS HEREBY ORDERED that, in connection with the advertising, promotion, offering, or sale of goods or services related to debt consolidation services, the Defendants and persons in active concert or participation with them who receive actual notice of this Order are hereby restrained and enjoined from:

- A. Falsely representing or assisting others in falsely representing to consumers, expressly or by implication, that Express Consolidation is a nonprofit entity or that fees for the debt consolidation services offered under the name of Express Consolidation are collected and controlled by a nonprofit entity;
- B. Falsely representing or assisting others in falsely representing, expressly or by implication, the costs or fees of debt consolidation services;
- C. Falsely representing or assisting others in falsely representing, expressly or by implication, the benefits that consumers will receive by contracting to receive debt consolidation services;
- D. Falsely representing or assisting others in falsely representing, expressly or by implication, that services offered by Defendants include services that will improve consumers' credit record, history, or rating, or protect against deterioration of the consumers' credit rating,

against negative credit history or against derogatory credit information; and

E. Making or assisting others in making any other express or implied representation or omission of material fact that is false or misleading, in any manner, orally or in writing, to any consumer or entity.

For purposes of this Paragraph, "material" means likely to affect a person's choice of, or conduct regarding, goods or services or a charitable contribution.

II.

IT IS FURTHER ORDERED that, in connection with telemarketing, the Defendants and persons in active concert or participation with them who receive actual notice of this Order are hereby restrained and enjoined from engaging in, or assisting others in engaging in:

- A. Falsely representing that Express Consolidation is a nonprofit entity and/or that fees for the Express Consolidation program are controlled by a nonprofit entity;
- B. Falsely representing that the only fee charged for the debt consolidation services offered by Defendants is a monthly administrative fee;
- C. Falsely representing that the services sold by Defendants will result in estimated savings of a specified dollar amount;
- D. Falsely representing that the debt consolidation services sold by Defendants will lower a consumer's monthly payment or total debt;
- E. Falsely representing the that the debt consolidation services sold by Defendants will improve a consumer's credit rating;
- F. Falsely representing that the consumer's first monthly payment for the Express Consolidation Program is refunded at the end of the Program; and

G. Making any other false or misleading statements to induce consumers to pay for services or to induce a charitable contribution in violation of the deceptive practices prohibitions of the Telemarketing Sales Rule, 16 C.F.R. § 310.3.

III.

IT IS FURTHER ORDERED that the Defendants and persons or entities in active concert or participation with them who receive actual notice of this Order are hereby restrained and enjoined from directly or indirectly requesting that a customer pay for goods or services, or causing billing information to be submitted for payment, unless and until the following information has been disclosed to the consumer truthfully, in a clear and conspicuous manner: (i) the total costs to purchase, receive, or use, and the quantity of, any goods or services for which payment is sought; (ii) all material restrictions, limitations, or conditions to purchase, receive, or use the goods or services that are the subject of the sales offer; (iii) if the seller has a policy of not making refunds, cancellations, exchanges, or repurchases, a statement informing the customer that this is the seller's policy; or, if the seller or telemarketer makes a representation about a refund, cancellation, exchange, or repurchase policy, a statement of all material terms and conditions of such policy. For purposes of this Paragraph, "material" means likely to affect a person's choice of, or conduct regarding, goods or services or a charitable contribution.

IV.

IT IS FURTHER ORDERED that, in connection with telemarketing, the Defendants and persons in active concert or participation with them who receive actual notice of this Order are hereby restrained and enjoined from engaging in, or causing other persons to engage in,

violations of the Telemarketing Sales Rule (Appendix), including, but not limited to:

A. Delivering recorded messages to persons who answer an outbound telephone call, disconnecting an outbound telephone call when a person answers without connecting the call to a sales representative, or otherwise failing to connect an outbound telephone call answered by a person to a sales representative within two (2) seconds of the person's completed greeting, unless the following four (4) conditions are met:

1. The person that initiates the call employs technology that ensures that the number of calls answered by a person that are not connected to a sales representative within two (2) seconds of the person's completed greeting is not more three (3) percent of all of the calls answered by a person, measured per day per calling campaign;
2. The person that initiates the call allows the telephone to ring for at least fifteen (15) seconds or four (4) rings before disconnecting an unanswered call;
3. Whenever a sales person is not available to speak with the individual who answers the call within two (2) seconds after the individual's completed greeting, the person who initiates the call promptly plays a recorded message that states the name and telephone number of the seller on whose behalf the call was placed; and
4. Defendants and persons in active concert or participation with them retain records, in accordance with 16 C.F.R. § 310.5 (b)-(d), establishing compliance with the preceding three conditions.

B. Initiating any outbound telephone call to a telephone number on the National Do Not Call Registry to induce the purchase of goods or services, unless the telephone call is:

1. a solicitation to induce charitable contributions;
 2. to a business;
 3. to a person who has expressly consented to receive outbound telemarketing calls from the seller on whose behalf the call is made and Defendants can prove that (a) the person's consent is recorded in a written agreement that clearly evidences such person's authorization that calls made by or on behalf of the seller may be placed to that person, and (b) such agreement includes the telephone number to which the calls may be placed and the signature of that person; or
 4. to a person who has not stated that he or she does not wish to receive outbound telephone calls from the seller on whose behalf the call is made and Defendants can prove that the person (a) purchased, rented, or leased the seller's goods or services, or engaged in a financial transaction with the seller, within the eighteen (18) months immediately preceding the date of the telephone call; or (b) submitted an inquiry or application regarding a product or service offered by the seller, within the three (3) months immediately preceding the date of a telemarketing call;
- C. Initiating any outbound telephone call to a person who has previously stated that he or she does not wish to receive an outbound telephone call made by or on behalf of the seller whose goods or services are being offered or made by or on behalf of the charitable organization for which a charitable contribution is being solicited; or
- D. Initiating any outbound telephone call to a telephone number within a given area code without first paying the required annual fee for access to the telephone numbers within that area

code that are on the National Do Not Call Registry, unless the telephone call is:

1. a solicitation to induce charitable contributions;
2. to businesses, or
3. on behalf of a seller who initiates, or causes others to initiate, telephone calls solely to persons that satisfy the conditions in Subparagraphs I.B.3 and I.B.4 of this Order, and does not access the National Do Not Call Registry for any other purpose.

V.

IT IS FURTHER ORDERED that any financial or brokerage institution, business entity, or person served with a copy of this Order that holds, controls, or maintains custody of any account or asset of Defendant Randall L. Leshin or of any of the Corporate Defendants that has been open during the period from May 1, 2006 through the date of this Order, shall:

A. Within five (5) business days of receiving a written request from the Commission's counsel provide the Commission's counsel with a sworn statement setting forth:

1. the identification number of each such account or asset titled in the name, individually or jointly, of Defendant Randall L. Leshin or any of the Corporate Defendants, or held on behalf of, or for the benefit of such Defendants; and
2. the balance of each such account, or a description of the nature and value of such asset as of the close of business on the day on which this Order is served, and, if the account or other asset has been closed or removed, the date closed or removed, the total funds removed in order to close the account, and the name of the person or entity to whom such account or other asset was remitted.

B. Upon request by the counsel for Commission promptly provide the Commission with copies of all records or other documentation pertaining to each such account or asset, including, but not limited to, originals or copies of account applications, account statements, signature cards, checks, drafts, deposit tickets, transfers to and from the accounts, all other debit and credit instruments or slips, currency transaction reports, and 1099 forms, provided that the records or other documentation requested by the Commission pertain to transactions after May 1, 2006.

C. In entering into this Order, the Commission relied upon the representations and warranties provided by Randall L. Leshin, P.A. and Consumer Credit Consolidation, Inc. regarding the balance of their respective operating accounts, which representations have been provided by counsel to Commission Staff in letters dated January 25, 2007.

D. Defendants Express Consolidation, Inc., Randall L. Leshin, P.A., and Randall L. Leshin shall arrange for staff of the Commission to have electronic access to records of transactions in the Old Account, the New Account, the Holding Account and all of the accounts of Express Consolidation, Inc. If the Commission has questions concerning transactions in these accounts or concerns that transactions may not be in compliance with the requirements of this Order, staff of the Commission shall consult with Defendants Express Consolidation, Inc., Randall L. Leshin, P.A., and Randall L. Leshin, before presenting any issues regarding compliance to the Court.

E. Defendants Express Consolidation, Inc., Randall L. Leshin, P.A., and Randall L. Leshin shall also provide the Commission with access to records sufficient to show, for the Old Account: (1) the date of enrollment of each client enrolled prior to February 2, 2007, in debt consolidation services serviced by Express Consolidation, Inc., Randall L. Leshin, P.A., or

Randall L. Leshin;(2) the State of residence of each client, and (3) the monthly amount paid by each client.

F. Defendants Express Consolidation, Inc., Randall L. Leshin, P.A., and Randall L. Leshin shall provide on a monthly basis, balance sheets, profit and loss statements, and general ledger entries of Express Consolidation, Inc. The monthly balance sheets and profit and loss statements shall be verified by the Controller as accurate. These records shall be provided within ten (10) days after the end of each month.

VI.

IT IS FURTHER ORDERED that:

- A. Randall L. Leshin, P.A. shall create a special trust account in the name of Randall L. Leshin, P.A. ("New Account") that shall be maintained separate from the existing special trust account in the name of Randall L. Leshin, P.A. ("Old Account").
- B. Funds in the existing special trust account as of February 2, 2007, and all funds collected from consumers who contracted for debt consolidation services prior to February 2, 2007, shall be maintained in the Old Account. Funds collected from consumers who contracted for debt consolidation services on or after February 2, 2007, shall be maintained in the New Account.
- C. This Order does not restrict transfers from the New Account.
- D. Defendants Express Consolidation, Inc., Randall L. Leshin, P.A., and Randall L. Leshin shall not transfer assets from the Old Account except for:
1. transfers for the purpose of paying creditors of consumers whose funds are maintained in the Old Account in the ordinary course of business;

2. transfers equal to 7.5 percent of the monthly payment amount collected from each consumer whose funds are maintained in the Old Account and whose monthly payment amount includes a fee, or \$35 per month for such a consumer, whichever is greater, not to exceed \$49 per month, for those consumers who do not live in a State in which the collection of fees is prohibited under all circumstances;
3. transfers to a newly created account, referred to herein as the "Holding Account"; and
4. refunds to consumers who contracted for debt consolidation services prior to February 2, 2007.

D. Defendants Express Consolidation, Inc., Randall L. Leshin, P.A., and Randall L. Leshin shall not transfer assets from the Holding Account except for disbursements to consumers who contracted for debt consolidation services prior to February 2, 2007, and have completed debt consolidation services.

VII.

IT IS FURTHER ORDERED that Defendants are hereby restrained and enjoined from destroying, erasing, mutilating, concealing, altering, transferring, or otherwise disposing of, in any manner, directly or indirectly, any documents that relate to the business, business practices, assets, or business or personal finances of any Defendant; and failing to continue to create and maintain standard accounting documents which were created by Defendants in the ordinary course of business prior to the date of filing of this lawsuit that relate to the transfer of funds in

connection with the bank accounts of Defendants Randall L. Leshin, Randall L. Leshin, P.A., and Express Consolidation.

VIII.

IT IS FURTHER ORDERED that the Corporate Defendants and Defendant Randall L. Leshin shall, within three weeks of the date of entry of this Order, prepare and deliver to counsel for the Commission completed financial statements on the forms attached to this Order as Attachments A (Financial Statement of Individual Defendant) and B (Financial Statement of Corporate Defendant). The financial statements shall be accurate as of the date of delivery.

IX.

IT IS FURTHER ORDERED that:

A. Defendants shall immediately provide a copy of this Order to each affiliate, subsidiary, division, sales entity, successor, assign, officer, director, employee, independent contractor, client company, agent, attorney, spouse, and representative of Defendants, and shall, within ten (10) days from the date of entry of this Order, provide the Commission with a sworn statement that (A) confirms that Defendants have *provided* copies of the Order as required by this paragraph; and (B) lists the names and addresses of each entity or person to whom Defendants *provided* a copy of the Order; and

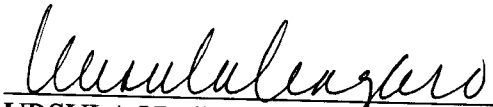
B. Defendants shall not take any action that would encourage officers, agents, directors, employees, salespersons, independent contractors, attorneys, subsidiaries, affiliates, successors, assigns, or other persons or entities in active concert or participation with Defendants to disregard this Order or believe that they are not bound by its provisions.

X.

IT IS FURTHER ORDERED that this Court shall retain jurisdiction of this matter for all purposes.

DONE AND ORDERED in Chambers at Miami, Florida this 26 day of

Jan, 2007.


URSULA UNGARO
United States District Judge

Agreed to by all parties:

/s/ Roger A. Colaizzi
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On behalf of Defendants Randall L. Leshin, Randall L. Leshin, P.A., and Express Consolidation, Inc.

/s/ Richard J. Capriola
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On behalf of Defendants Consumer Credit Consolidation, Inc., and Maureen A. Gaviola

/s/ Michael E. Tankersley
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Federal Trade Commission
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Facsimile: (202) 326-3395

On behalf of Plaintiff Federal Trade Commission
January 26, 2007

Attachments:

Text of Telemarketing Sales Rule, 16 C.F.R. Part 310
Financial Statement of Individual Defendant
Financial Statement of Corporate Defendant

APPENDIX
Code of Federal Regulations, Title 16: Commercial Practices
PART 310 - TELEMARKETING SALES RULE

Authority: 15 U.S.C. 6101-6108.
Source: 68 FR 4669, Jan. 29, 2003, unless otherwise noted.

§ 310.1 Scope of regulations in this part.

This part implements the Telemarketing and Consumer Fraud and Abuse Prevention Act, 15 U.S.C. 6101-6108, as amended

§ 310.2 Definitions.

- (a) *Acquirer* means a business organization, financial institution, or an agent of a business organization or financial institution that has authority from an organization that operates or licenses a credit card system to authorize merchants to accept, transmit, or process payment by credit card through the credit card system for money, goods or services, or anything else of value
- (b) *Attorney General* means the chief legal officer of a state
- (c) *Billing information* means any data that enables any person to access a customer's or donor's account, such as a credit card, checking, savings, share or similar account, utility bill, mortgage loan account, or debit card
- (d) *Caller identification service* means a service that allows a telephone subscriber to have the telephone number, and, where available, name of the calling party transmitted contemporaneously with the telephone call, and displayed on a device in or connected to the subscriber's telephone
- (e) *Cardholder* means a person to whom a credit card is issued or who is authorized to use a credit card on behalf of or in addition to the person to whom the credit card is issued
- (f) *Charitable contribution* means any donation or gift of money or any other thing of value.
- (g) *Commission* means the Federal Trade Commission
- (h) *Credit* means the right granted by a creditor to a debtor to defer payment of debt or to incur debt and defer its payment
- (i) *Credit card* means any card, plate, coupon book, or other credit device existing for the purpose of obtaining money, property, labor, or services on credit
- (j) *Credit card sales draft* means any record or evidence of a credit card transaction
- (k) *Credit card system* means any method or procedure used to process credit card transactions involving credit cards issued or licensed by the operator of that system
- (l) *Customer* means any person who is or may be required to pay for goods or services offered through telemarketing
- (m) *Donor* means any person solicited to make a charitable contribution
- (n) *Established business relationship* means a relationship between a seller and a consumer based on:
 - (1) the consumer's purchase, rental, or lease of the seller's goods or services or a financial transaction between the consumer and seller, within the eighteen (18) months immediately preceding the date of a telemarketing call; or
 - (2) the consumer's inquiry or application regarding a product or service offered by the seller, within the three (3) months immediately preceding the date of a telemarketing call
- (o) *Free-to-pay conversion* means, in an offer or agreement to sell or provide any goods or services, a provision under which a customer receives a product or service for free for an initial period and will incur an obligation to pay for the product or service if he or she does not take affirmative action to cancel before the end of that period

- (p) *Investment opportunity* means anything, tangible or intangible, that is offered, offered for sale, sold, or traded based wholly or in part on representations, either express or implied, about past, present, or future income, profit, or appreciation
- (q) *Material* means likely to affect a person's choice of, or conduct regarding, goods or services or a charitable contribution
- (r) *Merchant* means a person who is authorized under a written contract with an acquirer to honor or accept credit cards, or to transmit or process for payment credit card payments, for the purchase of goods or services or a charitable contribution
- (s) *Merchant agreement* means a written contract between a merchant and an acquirer to honor or accept credit cards, or to transmit or process for payment credit card payments, for the purchase of goods or services or a charitable contribution.
- (t) *Negative option feature* means, in an offer or agreement to sell or provide any goods or services, a provision under which the customer's silence or failure to take an affirmative action to reject goods or services or to cancel the agreement is interpreted by the seller as acceptance of the offer
- (u) *Outbound telephone call* means a telephone call initiated by a telemarketer to induce the purchase of goods or services or to solicit a charitable contribution
- (v) *Person* means any individual, group, unincorporated association, limited or general partnership, corporation, or other business entity
- (w) *Preacquired account information* means any information that enables a seller or telemarketer to cause a charge to be placed against a customer's or donor's account without obtaining the account number directly from the customer or donor during the telemarketing transaction pursuant to which the account will be charged
- (x) *Prize* means anything offered, or purportedly offered, and given, or purportedly given, to a person by chance. For purposes of this definition, chance exists if a person is guaranteed to receive an item and, at the time of the offer or purported offer, the telemarketer does not identify the specific item that the person will receive
- (y) *Prize promotion* means:
- (1) A sweepstakes or other game of chance; or
 - (2) An oral or written express or implied representation that a person has won, has been selected to receive, or may be eligible to receive a prize or purported prize
- (z) *Seller* means any person who, in connection with a telemarketing transaction, provides, offers to provide, or arranges for others to provide goods or services to the customer in exchange for consideration
- (aa) *State* means any state of the United States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, and any territory or possession of the United States
- (bb) *Telemarketer* means any person who, in connection with telemarketing, initiates or receives telephone calls to or from a customer or donor
- (cc) *Telemarketing* means a plan, program, or campaign which is conducted to induce the purchase of goods or services or a charitable contribution, by use of one or more telephones and which involves more than one interstate telephone call. The term does not include the solicitation of sales through the mailing of a catalog which: contains a written description or illustration of the goods or services offered for sale; includes the business address of the seller; includes multiple pages of written material or illustrations; and has been issued not less frequently than once a year, when the person making the solicitation does not solicit customers by telephone but only receives calls initiated by customers in response to the catalog and during those calls takes orders only without further solicitation. For purposes of the previous sentence, the term "further solicitation" does not include providing the customer with information about, or attempting to sell, any other item included in the same catalog which prompted the customer's call or in a substantially similar catalog
- (dd) *Upselling* means soliciting the purchase of goods or services following an initial transaction during a single

telephone call. The upsell is a separate telemarketing transaction, not a continuation of the initial transaction. An "external upsell" is a solicitation made by or on behalf of a seller different from the seller in the initial transaction, regardless of whether the initial transaction and the subsequent solicitation are made by the same telemarketer. An "internal upsell" is a solicitation made by or on behalf of the same seller as in the initial transaction, regardless of whether the initial transaction and subsequent solicitation are made by the same telemarketer

§ 310.3 Deceptive telemarketing acts or practices.

(a) *Prohibited deceptive telemarketing acts or practices.* It is a deceptive telemarketing act or practice and a violation of this Rule for any seller or telemarketer to engage in the following conduct:

(1) Before a customer pays 1 for goods or services offered, failing to disclose truthfully, in a clear and conspicuous manner, the following material information:

1 When a seller or telemarketer uses, or directs a customer to use, a courier to transport payment, the seller or telemarketer must make the disclosures required by §310.3(a)(1) before sending a courier to pick up payment or authorization for payment, or directing a customer to have a courier pick up payment or authorization for payment

(i) The total costs to purchase, receive, or use, and the quantity of, any goods or services that are the subject of the sales offer; 2

2 For offers of consumer credit products subject to the Truth in Lending Act, 15 U.S.C. 1601 *et seq.*, and Regulation Z, 12 CFR 226, compliance with the disclosure requirements under the Truth in Lending Act and Regulation Z shall constitute compliance with §310.3(a)(1)(i) of this Rule

(ii) All material restrictions, limitations, or conditions to purchase, receive, or use the goods or services that are the subject of the sales offer;

(iii) If the seller has a policy of not making refunds, cancellations, exchanges, or repurchases, a statement informing the customer that this is the seller's policy; or, if the seller or telemarketer makes a representation about a refund, cancellation, exchange, or repurchase policy, a statement of all material terms and conditions of such policy;

(iv) In any prize promotion, the odds of being able to receive the prize, and, if the odds are not calculable in advance, the factors used in calculating the odds; that no purchase or payment is required to win a prize or to participate in a prize promotion and that any purchase or payment will not increase the person's chances of winning; and the no-purchase/no-payment method of participating in the prize promotion with either instructions on how to participate or an address or local or toll-free telephone number to which customers may write or call for information on how to participate;

(v) All material costs or conditions to receive or redeem a prize that is the subject of the prize promotion;

(vi) In the sale of any goods or services represented to protect, insure, or otherwise limit a customer's liability in the event of unauthorized use of the customer's credit card, the limits on a cardholder's liability for unauthorized use of a credit card pursuant to 15 U.S.C. 1643; and

(vii) If the offer includes a negative option feature, all material terms and conditions of the negative option feature, including, but not limited to, the fact that the customer's account will be charged unless the customer takes an affirmative action to avoid the charge(s), the date(s) the charge(s) will be submitted for payment, and the specific steps the customer must take to avoid the charge(s)

(2) Misrepresenting, directly or by implication, in the sale of goods or services any of the following material information:

(i) The total costs to purchase, receive, or use, and the quantity of, any goods or services that are the subject of a sales offer;

(ii) Any material restriction, limitation, or condition to purchase, receive, or use goods or services that are the subject of a sales offer;

- (iii) Any material aspect of the performance, efficacy, nature, or central characteristics of goods or services that are the subject of a sales offer;
 - (iv) Any material aspect of the nature or terms of the seller's refund, cancellation, exchange, or repurchase policies;
 - (v) Any material aspect of a prize promotion including, but not limited to, the odds of being able to receive a prize, the nature or value of a prize, or that a purchase or payment is required to win a prize or to participate in a prize promotion;
 - (vi) Any material aspect of an investment opportunity including, but not limited to, risk, liquidity, earnings potential, or profitability;
 - (vii) A seller's or telemarketer's affiliation with, or endorsement or sponsorship by, any person or government entity;
 - (viii) That any customer needs offered goods or services to provide protections a customer already has pursuant to 15 U.S.C. 1643; or
 - (ix) Any material aspect of a negative option feature including, but not limited to, the fact that the customer's account will be charged unless the customer takes an affirmative action to avoid the charge(s), the date(s) the charge(s) will be submitted for payment, and the specific steps the customer must take to avoid the charge(s)
- (3) Causing billing information to be submitted for payment, or collecting or attempting to collect payment for goods or services or a charitable contribution, directly or indirectly, without the customer's or donor's express verifiable authorization, except when the method of payment used is a credit card subject to protections of the Truth in Lending Act and Regulation Z, 3 or a debit card subject to the protections of the Electronic Fund Transfer Act and Regulation E. 4 Such authorization shall be deemed verifiable if any of the following means is employed:
- 3 Truth in Lending Act, 15 U.S.C. 1601 *et seq.*, and Regulation Z, 12 CFR part 226
- 4 Electronic Fund Transfer Act, 15 U.S.C. 1693 *et seq.*, and Regulation E, 12 CFR part 205
- (i) Express written authorization by the customer or donor, which includes the customer's or donor's signature; 5
- 5 For purposes of this Rule, the term "signature" shall include an electronic or digital form of signature, to the extent that such form of signature is recognized as a valid signature under applicable federal law or state contract law
- (ii) Express oral authorization which is audio-recorded and made available upon request to the customer or donor, and the customer's or donor's bank or other billing entity, and which evidences clearly both the customer's or donor's authorization of payment for the goods or services or charitable contribution that are the subject of the telemarketing transaction and the customer's or donor's receipt of all of the following information:
 - (A) The number of debits, charges, or payments (if more than one);
 - (B) The date(s) the debit(s), charge(s), or payment(s) will be submitted for payment;
 - (C) The amount(s) of the debit(s), charge(s), or payment(s);
 - (D) The customer's or donor's name;
 - (E) The customer's or donor's billing information, identified with sufficient specificity such that the customer or donor understands what account will be used to collect payment for the goods or services or charitable contribution that are the subject of the telemarketing transaction;
 - (F) A telephone number for customer or donor inquiry that is answered during normal business hours; and
 - (G) The date of the customer's or donor's oral authorization; or
 - (iii) Written confirmation of the transaction, identified in a clear and conspicuous manner as such on the outside of the envelope, sent to the customer or donor via first class mail prior to the submission for payment of the customer's or donor's billing information, and that includes all of the information contained in §§310.3(a)(3)(ii)(A)-(G) and a clear and conspicuous statement of the procedures by which the customer or donor can obtain a refund from the seller or telemarketer or charitable organization in the event the confirmation is inaccurate; *provided*, however, that this means of authorization shall not be deemed verifiable in instances in which goods or services are offered in a transaction involving a free-to-pay conversion and preacquired account information

(4) Making a false or misleading statement to induce any person to pay for goods or services or to induce a charitable contribution

(b) *Assisting and facilitating.* It is a deceptive telemarketing act or practice and a violation of this Rule for a person to provide substantial assistance or support to any seller or telemarketer when that person knows or consciously avoids knowing that the seller or telemarketer is engaged in any act or practice that violates §§310.3(a), (c) or (d), or §310.4 of this Rule

(c) *Credit card laundering.* Except as expressly permitted by the applicable credit card system, it is a deceptive telemarketing act or practice and a violation of this Rule for:

(1) A merchant to present to or deposit into, or cause another to present to or deposit into, the credit card system for payment, a credit card sales draft generated by a telemarketing transaction that is not the result of a telemarketing credit card transaction between the cardholder and the merchant;

(2) Any person to employ, solicit, or otherwise cause a merchant, or an employee, representative, or agent of the merchant, to present to or deposit into the credit card system for payment, a credit card sales draft generated by a telemarketing transaction that is not the result of a telemarketing credit card transaction between the cardholder and the merchant; or

(3) Any person to obtain access to the credit card system through the use of a business relationship or an affiliation with a merchant, when such access is not authorized by the merchant agreement or the applicable credit card system

(d) *Prohibited deceptive acts or practices in the solicitation of charitable contributions.* It is a fraudulent charitable solicitation, a deceptive telemarketing act or practice, and a violation of this Rule for any telemarketer soliciting charitable contributions to misrepresent, directly or by implication, any of the following material information:

(1) The nature, purpose, or mission of any entity on behalf of which a charitable contribution is being requested;

(2) That any charitable contribution is tax deductible in whole or in part;

(3) The purpose for which any charitable contribution will be used;

(4) The percentage or amount of any charitable contribution that will go to a charitable organization or to any particular charitable program;

(5) Any material aspect of a prize promotion including, but not limited to: the odds of being able to receive a prize; the nature or value of a prize; or that a charitable contribution is required to win a prize or to participate in a prize promotion; or

(6) A charitable organization's or telemarketer's affiliation with, or endorsement or sponsorship by, any person or government entity

§ 310.4 Abusive telemarketing acts or practices.

(a) *Abusive conduct generally.* It is an abusive telemarketing act or practice and a violation of this Rule for any seller or telemarketer to engage in the following conduct:

(1) Threats, intimidation, or the use of profane or obscene language;

(2) Requesting or receiving payment of any fee or consideration for goods or services represented to remove derogatory information from, or improve, a person's credit history, credit record, or credit rating until:

(i) The time frame in which the seller has represented all of the goods or services will be *provided* to that person has expired; and

(ii) The seller has *provided* the person with documentation in the form of a consumer report from a consumer reporting agency demonstrating that the promised results have been achieved, such report having been issued more than six months after the results were achieved. Nothing in this Rule should be construed to affect the requirement in the Fair Credit Reporting Act, 15 U.S.C. 1681, that a consumer report may only be obtained for a specified

permissible purpose;

- (3) Requesting or receiving payment of any fee or consideration from a person for goods or services represented to recover or otherwise assist in the return of money or any other item of value paid for by, or promised to, that person in a previous telemarketing transaction, until seven (7) business days after such money or other item is delivered to that person. This provision shall not apply to goods or services *provided* to a person by a licensed attorney;
- (4) Requesting or receiving payment of any fee or consideration in advance of obtaining a loan or other extension of credit when the seller or telemarketer has guaranteed or represented a high likelihood of success in obtaining or arranging a loan or other extension of credit for a person;
- (5) Disclosing or receiving, for consideration, unencrypted consumer account numbers for use in telemarketing; *provided*, however, that this paragraph shall not apply to the disclosure or receipt of a customer's or donor's billing information to process a payment for goods or services or a charitable contribution pursuant to a transaction;
- (6) Causing billing information to be submitted for payment, directly or indirectly, without the express informed consent of the customer or donor. In any telemarketing transaction, the seller or telemarketer must obtain the express informed consent of the customer or donor to be charged for the goods or services or charitable contribution and to be charged using the identified account. In any telemarketing transaction involving preacquired account information, the requirements in paragraphs (a)(6)(i) through (ii) of this section must be met to evidence express informed consent
 - (i) In any telemarketing transaction involving preacquired account information and a free-to-pay conversion feature, the seller or telemarketer must:
 - (A) obtain from the customer, at a minimum, the last four (4) digits of the account number to be charged;
 - (B) obtain from the customer his or her express agreement to be charged for the goods or services and to be charged using the account number pursuant to paragraph (a)(6)(i)(A) of this section; and
 - (C) make and maintain an audio recording of the entire telemarketing transaction
 - (ii) In any other telemarketing transaction involving preacquired account information not described in paragraph (a)(6)(i) of this section, the seller or telemarketer must:
 - (A) at a minimum, identify the account to be charged with sufficient specificity for the customer or donor to understand what account will be charged; and
 - (B) obtain from the customer or donor his or her express agreement to be charged for the goods or services and to be charged using the account number identified pursuant to paragraph (a)(6)(ii)(A) of this section; or
- (7) Failing to transmit or cause to be transmitted the telephone number, and, when made available by the telemarketer's carrier, the name of the telemarketer, to any caller identification service in use by a recipient of a telemarketing call; *provided* that it shall not be a violation to substitute (for the name and phone number used in, or billed for, making the call) the name of the seller or charitable organization on behalf of which a telemarketing call is placed, and the seller's or charitable organization's customer or donor service telephone number, which is answered during regular business hours
 - (b) *Pattern of calls.* (1) It is an abusive telemarketing act or practice and a violation of this Rule for a telemarketer to engage in, or for a seller to cause a telemarketer to engage in, the following conduct:
 - (i) Causing any telephone to ring, or engaging any person in telephone conversation, repeatedly or continuously with intent to annoy, abuse, or harass any person at the called number;
 - (ii) Denying or interfering in any way, directly or indirectly, with a person's right to be placed on any registry of names and/or telephone numbers of persons who do not wish to receive outbound telephone calls established to comply with §310.4(b)(1)(iii);
 - (iii) Initiating any outbound telephone call to a person when:
 - (A) that person previously has stated that he or she does not wish to receive an outbound telephone call made by or on behalf of the seller whose goods or services are being offered or made on behalf of the charitable organization for

which a charitable contribution is being solicited; or

(B) that person's telephone number is on the "do-not-call" registry, maintained by the Commission, of persons who do not wish to receive outbound telephone calls to induce the purchase of goods or services unless the seller

(i) has obtained the express agreement, in writing, of such person to place calls to that person. Such written agreement shall clearly evidence such person's authorization that calls made by or on behalf of a specific party may be placed to that person, and shall include the telephone number to which the calls may be placed and the signature of that person; or

6 For purposes of this Rule, the term "signature" shall include an electronic or digital form of signature, to the extent that such form of signature is recognized as a valid signature under applicable federal law or state contract law

(ii) has an established business relationship with such person, and that person has not stated that he or she does not wish to receive outbound telephone calls under paragraph (b)(1)(iii)(A) of this section; or

(iv) Abandoning any outbound telephone call. An outbound telephone call is "abandoned" under this section if a person answers it and the telemarketer does not connect the call to a sales representative within two (2) seconds of the person's completed greeting

(2) It is an abusive telemarketing act or practice and a violation of this Rule for any person to sell, rent, lease, purchase, or use any list established to comply with §310.4(b)(1)(iii)(A), or maintained by the Commission pursuant to §310.4(b)(1)(iii)(B), for any purpose except compliance with the provisions of this Rule or otherwise to prevent telephone calls to telephone numbers on such lists

(3) A seller or telemarketer will not be liable for violating §310.4(b)(1)(ii) and (iii) if it can demonstrate that, as part of the seller's or telemarketer's routine business practice:

(i) It has established and implemented written procedures to comply with §310.4(b)(1)(ii) and (iii);

(ii) It has trained its personnel, and any entity assisting in its compliance, in the procedures established pursuant to §310.4(b)(3)(i);

(iii) The seller, or a telemarketer or another person acting on behalf of the seller or charitable organization, has maintained and recorded a list of telephone numbers the seller or charitable organization may not contact, in compliance with §310.4(b)(1)(iii)(A);

(iv) The seller or a telemarketer uses a process to prevent telemarketing to any telephone number on any list established pursuant to §§310.4(b)(3)(iii) or 310.4(b)(1)(iii)(B), employing a version of the "do-not-call" registry obtained from the Commission no more than thirty days prior to the date any call is made, and maintains records documenting this process;

(v) The seller or a telemarketer or another person acting on behalf of the seller or charitable organization, monitors and enforces compliance with the procedures established pursuant to §310.4(b)(3)(i); and

(vi) Any subsequent call otherwise violating §310.4(b)(1)(ii) or (iii) is the result of error

(4) A seller or telemarketer will not be liable for violating 310.4(b)(1)(iv) if:

(i) the seller or telemarketer employs technology that ensures abandonment of no more than three (3) percent of all calls answered by a person, measured per day per calling campaign;

(ii) the seller or telemarketer, for each telemarketing call placed, allows the telephone to ring for at least fifteen (15) seconds or four (4) rings before disconnecting an unanswered call;

(iii) whenever a sales representative is not available to speak with the person answering the call within two (2) seconds after the person's completed greeting, the seller or telemarketer promptly plays a recorded message that states the name and telephone number of the seller on whose behalf the call was placed⁷; and

⁷ This provision does not affect any seller's or telemarketer's obligation to comply with relevant state and federal laws, including but not limited to the TCPA, 47 U.S.C. 227, and 47 CFR part 64.1200

(iv) the seller or telemarketer, in accordance with §310.5(b)-(d), retains records establishing compliance with

§310.4(b)(4)(i)-(iii)

(c) *Calling time restrictions.* Without the prior consent of a person, it is an abusive telemarketing act or practice and a violation of this Rule for a telemarketer to engage in outbound telephone calls to a person's residence at any time other than between 8:00 a.m. and 9:00 p.m. local time at the called person's location

(d) *Required oral disclosures in the sale of goods or services.* It is an abusive telemarketing act or practice and a violation of this Rule for a telemarketer in an outbound telephone call or internal or external upsell to induce the purchase of goods or services to fail to disclose truthfully, promptly, and in a clear and conspicuous manner to the person receiving the call, the following information:

- (1) The identity of the seller;
- (2) That the purpose of the call is to sell goods or services;
- (3) The nature of the goods or services; and
- (4) That no purchase or payment is necessary to be able to win a prize or participate in a prize promotion if a prize promotion is offered and that any purchase or payment will not increase the person's chances of winning. This disclosure must be made before or in conjunction with the description of the prize to the person called. If requested by that person, the telemarketer must disclose the no-purchase/no-payment entry method for the prize promotion; *provided*, however, that, in any internal upsell for the sale of goods or services, the seller or telemarketer must provide the disclosures listed in this section only to the extent that the information in the upsell differs from the disclosures *provided* in the initial telemarketing transaction

(e) *Required oral disclosures in charitable solicitations.* It is an abusive telemarketing act or practice and a violation of this Rule for a telemarketer, in an outbound telephone call to induce a charitable contribution, to fail to disclose truthfully, promptly, and in a clear and conspicuous manner to the person receiving the call, the following information:

- (1) The identity of the charitable organization on behalf of which the request is being made; and
- (2) That the purpose of the call is to solicit a charitable contribution

§ 310.5 Recordkeeping requirements.

(a) Any seller or telemarketer shall keep, for a period of 24 months from the date the record is produced, the following records relating to its telemarketing activities:

- (1) All substantially different advertising, brochures, telemarketing scripts, and promotional materials;
- (2) The name and last known address of each prize recipient and the prize awarded for prizes that are represented, directly or by implication, to have a value of \$25.00 or more;
- (3) The name and last known address of each customer, the goods or services purchased, the date such goods or services were shipped or *provided*, and the amount paid by the customer for the goods or services; 8

8 For offers of consumer credit products subject to the Truth in Lending Act, 15 U.S.C. 1601 *et seq.*, and Regulation Z, 12 CFR 226, compliance with the recordkeeping requirements under the Truth in Lending Act, and Regulation Z, shall constitute compliance with §310.5(a)(3) of this Rule

(4) The name, any fictitious name used, the last known home address and telephone number, and the job title(s) for all current and former employees directly involved in telephone sales or solicitations; *provided*, however, that if the seller or telemarketer permits fictitious names to be used by employees, each fictitious name must be traceable to only one specific employee; and

(5) All verifiable authorizations or records of express informed consent or express agreement required to be *provided* or received under this Rule

(b) A seller or telemarketer may keep the records required by §310.5(a) in any form, and in the same manner,

format, or place as they keep such records in the ordinary course of business. Failure to keep all records required by §310.5(a) shall be a violation of this Rule

(c) The seller and the telemarketer calling on behalf of the seller may, by written agreement, allocate responsibility between themselves for the recordkeeping required by this Section. When a seller and telemarketer have entered into such an agreement, the terms of that agreement shall govern, and the seller or telemarketer, as the case may be, need not keep records that duplicate those of the other. If the agreement is unclear as to who must maintain any required record(s), or if no such agreement exists, the seller shall be responsible for complying with §§310.5(a)(1)-(3) and (5); the telemarketer shall be responsible for complying with §310.5(a)(4)

(d) In the event of any dissolution or termination of the seller's or telemarketer's business, the principal of that seller or telemarketer shall maintain all records as required under this Section. In the event of any sale, assignment, or other change in ownership of the seller's or telemarketer's business, the successor business shall maintain all records required under this Section

§ 310.6 Exemptions.

(a) Solicitations to induce charitable contributions via outbound telephone calls are not covered by §310.4(b)(1)(iii)(B) of this Rule

(b) The following acts or practices are exempt from this Rule:

(1) The sale of pay-per-call services subject to the Commission's Rule entitled "Trade Regulation Rule Pursuant to the Telephone Disclosure and Dispute Resolution Act of 1992," 16 CFR Part 308, *provided*, however, that this exemption does not apply to the requirements of §§310.4(a)(1), (a)(7), (b), and (c);

(2) The sale of franchises subject to the Commission's Rule entitled "Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures," ("Franchise Rule") 16 CFR Part 436, *provided*, however, that this exemption does not apply to the requirements of §§310.4(a)(1), (a)(7), (b), and (c);

(3) Telephone calls in which the sale of goods or services or charitable solicitation is not completed, and payment or authorization of payment is not required, until after a face-to-face sales or donation presentation by the seller or charitable organization, *provided*, however, that this exemption does not apply to the requirements of §§310.4(a)(1), (a)(7), (b), and (c);

(4) Telephone calls initiated by a customer or donor that are not the result of any solicitation by a seller, charitable organization, or telemarketer, *provided*, however, that this exemption does not apply to any instances of upselling included in such telephone calls;

(5) Telephone calls initiated by a customer or donor in response to an advertisement through any medium, other than direct mail solicitation, *provided*, however, that this exemption does not apply to calls initiated by a customer or donor in response to an advertisement relating to investment opportunities, business opportunities other than business arrangements covered by the Franchise Rule, or advertisements involving goods or services described in §§310.3(a)(1)(vi) or 310.4(a)(2)-(4); or to any instances of upselling included in such telephone calls;

(6) Telephone calls initiated by a customer or donor in response to a direct mail solicitation, including solicitations via the U.S. Postal Service, facsimile transmission, electronic mail, and other similar methods of delivery in which a solicitation is directed to specific address(es) or person(s), that clearly, conspicuously, and truthfully discloses all material information listed in §310.3(a)(1) of this Rule, for any goods or services offered in the direct mail solicitation, and that contains no material misrepresentation regarding any item contained in §310.3(d) of this Rule for any requested charitable contribution; *provided*, however, that this exemption does not apply to calls initiated by a customer in response to a direct mail solicitation relating to prize promotions, investment opportunities, business opportunities other than business arrangements covered by the Franchise Rule, or goods or services described in §§310.3(a)(1)(vi) or 310.4(a)(2)-(4); or to any instances of upselling included in such telephone calls; and

(7) Telephone calls between a telemarketer and any business, except calls to induce the retail sale of nondurable

office or cleaning supplies; *provided*, however, that §310.4(b)(1)(iii)(B) and §310.5 of this Rule shall not apply to sellers or telemarketers of nondurable office or cleaning supplies

§ 310.7 Actions by states and private persons.

(a) Any attorney general or other officer of a state authorized by the state to bring an action under the Telemarketing and Consumer Fraud and Abuse Prevention Act, and any private person who brings an action under that Act, shall serve written notice of its action on the Commission, if feasible, prior to its initiating an action under this Rule. The notice shall be sent to the Office of the Director, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580, and shall include a copy of the state's or private person's complaint and any other pleadings to be filed with the court. If prior notice is not feasible, the state or private person shall serve the Commission with the required notice immediately upon instituting its action

(b) Nothing contained in this Section shall prohibit any attorney general or other authorized state official from proceeding in state court on the basis of an alleged violation of any civil or criminal statute of such state

§ 310.8 Fee for access to the National Do Not Call Registry.

(a) It is a violation of this Rule for any seller to initiate, or cause any telemarketer to initiate, an outbound telephone call to any person whose telephone number is within a given area code unless such seller, either directly or through another person, first has paid the annual fee, required by §310.8(c), for access to telephone numbers within that area code that are included in the National Do Not Call Registry maintained by the Commission under §310.4(b)(1)(iii)(B); *provided*, however, that such payment is not necessary if the seller initiates, or causes a telemarketer to initiate, calls solely to persons pursuant to §§310.4(b)(1)(iii)(B)(i) or (ii), and the seller does not access the National Do Not Call Registry for any other purpose.

(b) It is a violation of this Rule for any telemarketer, on behalf of any seller, to initiate an outbound telephone call to any person whose telephone number is within a given area code unless that seller, either directly or through another person, first has paid the annual fee, required by §310.8(c), for access to the telephone numbers within that area code that are included in the National Do Not Call Registry; *provided*, however, that such payment is not necessary if the seller initiates, or causes a telemarketer to initiate, calls solely to persons pursuant to §§310.4(b)(1)(iii)(B)(i) or (ii), and the seller does not access the National Do Not Call Registry for any other purpose.

(c) The annual fee, which must be paid by any person prior to obtaining access to the National Do Not Call Registry, is \$62 per area code of data accessed, up to a maximum of \$17,050; *provided*, however, that there shall be no charge for the first five area codes of data accessed by any person, and *provided further*, that there shall be no charge to any person engaging in or causing others to engage in outbound telephone calls to consumers and who is accessing the National Do Not Call Registry without being required under this Rule, 47 CFR 64.1200, or any other Federal law. Any person accessing the National Do Not Call Registry may not participate in any arrangement to share the cost of accessing the registry, including any arrangement with any telemarketer or service provider to divide the costs to access the registry among various clients of that telemarketer or service provider.

(d) After a person, either directly or through another person, pays the fees set forth in §310.8(c), the person will be *provided* a unique account number which will allow that person to access the registry data for the selected area codes at any time for twelve months following the first day of the month in which the person paid the fee ("the annual period"). To obtain access to additional area codes of data during the first six months of the annual period, the person must first pay \$62 for each additional area code of data not initially selected. To obtain access to additional area codes of data during the second six months of the annual period, the person must first pay \$31 for each additional area code of data not initially selected. The payment of the additional fee will permit the person to access the additional area codes of data for the remainder of the annual period.

(e) Access to the National Do Not Call Registry is limited to telemarketers, sellers, others engaged in or causing

others to engage in telephone calls to consumers, service providers acting on behalf of such persons, and any government agency that has law enforcement authority. Prior to accessing the National Do Not Call Registry, a person must provide the identifying information required by the operator of the registry to collect the fee, and must certify, under penalty of law, that the person is accessing the registry solely to comply with the provisions of this Rule or to otherwise prevent telephone calls to telephone numbers on the registry. If the person is accessing the registry on behalf of sellers, that person also must identify each of the sellers on whose behalf it is accessing the registry, must provide each seller's unique account number for access to the national registry, and must certify, under penalty of law, that the sellers will be using the information gathered from the registry solely to comply with the provisions of this Rule or otherwise to prevent telephone calls to telephone numbers on the registry.

§ 310.9 Severability.

The provisions of this Rule are separate and severable from one another. If any provision is stayed or determined to be invalid, it is the Commission's intention that the remaining provisions shall continue in effect.