

To: tsr@ftc.gov

Subject: FTC File No. R411001, Telemarketing Sales Rule, 16 CFR Part 310 – Comment

Dear Sirs/Madams:

On behalf of Progressive Casualty Insurance Company (“Progressive”), please accept the following comments on the Federal Trade Commission’s proposed amendments to its Telemarketing Sales Rule, 16 CFR Part 310, *et seq.* (the “Rule”):

1. Section 310.2 Definitions

(t) Outbound telephone call. The Rule defines an “outbound telephone call” to include both of the following situations of “up-selling”: 1) when, during a single call, a consumer is transferred from one telemarketer to a different telemarketer; and 2) when a single telemarketer solicits purchases on behalf of two separate sellers. The Commission further explains in the commentary prefacing the Rule its intent to sweep certain unsolicited inbound calls, which are exempt from the Rule, within this amended definition of “outbound telephone calls.” This may occur when the seller originally called by a consumer offers additional items for sale after the completion of an initial sale, or when the original seller transfers the consumer to another seller. In these situations, the second portion of the call would be an “outbound telephone call” and, as such, no longer exempt from the Rule.

One practical result of this interpretation is to increase the cost of providing value-added services to these unsolicited consumers without providing any commensurate protection to justify these costs. For example, Progressive may offer an insurance quote for boat or recreation vehicle coverage through an affiliated company after completing an automobile quote for an unsolicited inbound caller. Because the insurance policies are provided through separate companies, the second quote offered would be provided by a separate “seller,” thereby requiring compliance with the Rule. Accordingly, the call center employee must provide the affirmative disclosures required under the Rule as if Progressive had just placed the call, obtain a second reiteration from the consumer of his/her billing information, and potentially obtain and record the consumer’s “express verifiable authorization” to proceed with the second offering if the consumer is included in the federal do-not-call registry. These disclosures serve no purpose because, with respect to inbound calls, the consumer knows the company that he/she is calling, and knows the call is about the consumer purchasing goods or services. Repeating this information for additional products or services makes no sense and will likely serve only to annoy the consumers. Moreover, these requirements would over-burden Progressive’s legitimate sales practices while providing the consumer no protection beyond that already mandated by the applicable state insurance trade practice laws.

To support including unsolicited inbound calls transferred by one seller to another seller within its definition of outbound telephone calls, the Commission sites the dangers of the practice of including the consumer’s billing information in the transfer to the second

seller. However, the privacy rules mandated by the Gramm-Leach-Bliley Act prohibit financial institutions from disclosing customer account information to any nonaffiliated third party for use in such circumstances. Moreover, the Rule itself also prohibits transferring or using billing information unless it is received from the consumer during the particular solicitation at hand. Thus, the protection sought by the Commission is already provided by other means. Again, the compliance costs are not commensurate to the consumer protections afforded by including “warm transfers” within the definition of an outbound telephone call.

2. **Section 310.4(d) and predictive dialers**

The Commission has invited comment on its view that telemarketers who abandon calls placed by predictive dialers are violating Section 310.4(d) and whether, as an alternative approach, the Commission should mandate a maximum setting for abandoned calls. Interpreting any abandonment rate greater than zero to be a per se violation of the Rule fails to strike any balance between maximizing consumer protections and imposing unnecessary burdens on the legitimate telemarketing industry. Such a strict standard will, in effect, ban predictive dialers because, in such circumstances, there will be no economic advantage for using predictive dialers. This will result in significant cost increases to business and, ultimately, the consumer. Alternate options that balance the consumer’s right to privacy with the legitimate interest of telemarketers would seem a more appropriate approach.

Rather than enacting rules that will, in fact, ban the use of predictive dialers altogether, Progressive respectfully suggests requiring a maximum setting for abandoned calls of 3%. A 3% abandonment rate is a feasible, realistic goal that, with proper analysis and attention, should be attainable by the telemarketing industry. Technology currently exists to provide real time reports of abandonment rates, which could be archived by telemarketers on a daily, monthly or weekly basis and used to aid in policing any such limitations set by the Rule.

Progressive also favors playing a tape-recorded message when the use of a predictive dialer results in a shortage of telemarketing agents available to take the call. This type of message could provide the company name, reason for the call and a meaningful telephone number to return the call. Such a message would benefit both the caller and the consumer. For the consumer, it would alleviate any fears generated by hang-ups from unknown sources while providing the information necessary to be placed on the company’s do-no-call list or to determine what company may be ignoring the consumer’s “do-not-call” request. For the company leaving the message, it provides consumers who are interested in obtaining its goods or services the means to return the call.

Although Progressive also would not object to limiting the use of predictive dialers to companies that are able to transmit Caller ID information, our experience reveals that this is not feasible in all areas. This function currently is in the hands of the telecommunications carriers, which do not all provide this capability.

Progressive appreciates the opportunity to comment on the proposed amendment to the Rule.

Very truly yours,

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