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UNITED STATES OF AMERICA

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

13 UNITED STATES OF AMERICA,
14 Plaintiff,
15 v.
16 VOICE-MAIL BROADCASTING
17 CORPORATION, a California
18 corporation, and JESSE CROWE,
19 Defendants.

CV -
* * CV08-00521 **FRAMM**

**STIPULATED JUDGMENT
AND ORDER FOR
PERMANENT INJUNCTION**

JTLx

20
21 Plaintiff, the United States of America, acting upon notification and
22 authorization to the Attorney General by the Federal Trade Commission ("FTC"),
23 has commenced this action by filing the complaint herein, and Defendants, Voice-
24 Mail Broadcasting Corporation and Jesse Crowe, have waived service of the
25 summons and the complaint. The parties, represented by the attorneys whose
26 names appear hereafter, have agreed to settlement of this action without

27
28 Stipulated Judgment

1 7. Defendants have agreed that this Order does not entitle Defendants to
2 seek or to obtain attorneys' fees as a prevailing party under the Equal Access to
3 Justice Act, 28 U.S.C. § 2412, and Defendants further waive any rights to
4 attorneys' fees that may arise under this or any other provision of law.

5 8. Entry of this Order is in the public interest.

6 DEFINITIONS

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

8 1. "Asset" means any legal or equitable interest in, or right or claim to,
9 any real and personal property, including without limitation, chattels, goods,
10 instruments, equipment, fixtures, general intangibles, leaseholds, mail or other
11 deliveries, inventory, checks, notes, accounts, credits, contracts, receivables,
12 shares of stock, and all cash, wherever located.

13 2. "Charitable contribution" means any donation or gift of money or any
14 other thing of value.

15 3. "Corporate Defendant" means Voice-Mail Broadcasting Corporation
16 ("VMBC"), a California corporation.

17 4. "Customer" means any person who is or may be required to pay for
18 goods or services offered through telemarketing.

19 5. "Defendants" means Voice-Mail Broadcasting Corporation and Jesse
20 Crowe.

21 6. "Donor" means any person solicited to make a charitable
22 contribution.

23 7. "Established business relationship" means a relationship between the
24 seller and a person based on: (a) the person's purchase, rental, or lease of the
25 seller's goods or services or a financial transaction between the person and seller,
26 within the eighteen (18) months immediately preceding the date of the
27 telemarketing call; or (b) the person's inquiry or application regarding a product or

1 service offered by the seller, within the three (3) months immediately preceding
2 the date of a telemarketing call.

3 8. "Outbound telephone call" means a telephone call initiated by a
4 telemarketer to induce the purchase of goods or services or to solicit a charitable
5 contribution.

6 9. "Person" means any individual, group, unincorporated association,
7 limited or general partnership, corporation, or other business entity.

8 10. "Representatives" means Defendants' successors, assigns, officers,
9 agents, servants, employees, attorneys and those persons in active concert or
10 participation with them who receive actual notice of this Order by personal service
11 or otherwise.

12 11. "Seller" means any person who, in connection with a telemarketing
13 transaction, provides, offers to provide, or arranges for others to provide goods or
14 services to the customer in exchange for consideration whether or not such person
15 is under the jurisdiction of the FTC.

16 12. "Telemarketer" means any person who, in connection with
17 telemarketing, initiates or receives telephone calls to or from a customer or donor.

18 13. "Telemarketing" means a plan, program, or campaign which is
19 conducted to induce the purchase of goods or services or a charitable contribution,
20 by use of one or more telephones and which involves more than one interstate
21 telephone call. Telemarketing does not include the solicitation of sales through
22 the mailing of a catalog which: contains a written description or illustration of the
23 goods or services offered for sale; includes the business address of the seller;
24 includes multiple pages of written material or illustrations; and has been issued not
25 less frequently than once a year, when the person making the solicitation does not
26 solicit customers by telephone but only receives calls initiated by customers in
27 response to the catalog and during those calls takes orders only without further

1 solicitation. For purposes of the previous sentence, the term “further solicitation”
2 does not include providing the customer with information about, or attempting to
3 sell, any other item included in the same catalog which prompted the customer’s
4 call or in a substantially similar catalog.

5 14. “Telemarketing Sales Rule” or “Rule” means the FTC Rule entitled
6 “Telemarketing Sales Rule,” 16 C.F.R. § 310, attached hereto as Appendix A or as
7 may be hereafter amended.

8 ORDER

9 10 **I. PROHIBITION AGAINST ABUSIVE TELEMARKETING PRACTICES**

11 **IT IS ORDERED** that, in connection with telemarketing, Defendants and
12 their Representatives are hereby permanently restrained and enjoined from
13 engaging in, causing other persons to engage in, or assisting other persons to
14 engage in, violations of the Telemarketing Sales Rule, including but not limited to
15 delivering a recorded message to a person who answers an outbound telephone
16 call, disconnecting an outbound telephone call when a person answers without
17 connecting the call to a sales representative, or otherwise failing to connect an
18 outbound telephone call answered by a person to a sales representative within two
19 (2) seconds of the person’s completed greeting, *provided, however*, that outbound
20 telephone calls that deliver recorded messages do not violate this provision if the
21 following four (4) conditions are met:

22 1. Defendants and their Representatives employ technology that
23 ensures that no more than three (3) percent of all calls answered by a person are not
24 connected to a sales representative within two (2) seconds of the person’s
25 completed greeting, measured per day per calling campaign;

1 2. Defendants and their Representatives, for each telemarketing
2 call placed, allow the telephone to ring for at least fifteen (15) seconds or four (4)
3 rings before disconnecting an unanswered call;

4 3. Whenever a sales representative is not available to speak with
5 the individual who answers the call within two (2) seconds after the individual's
6 completed greeting, the Defendants and their Representatives promptly play a
7 recorded message that states the name and telephone number of the seller on
8 whose behalf the call was placed; and

9 4. Defendants and their Representatives retain records, in
10 accordance with 16 C.F.R. § 310.5 (b)-(d), establishing compliance with the
11 preceding three conditions, *provided however*, that if the Commission promulgates
12 rules that, in whole or part, modify or supersede the Telemarketing Sales Rule, on
13 and after the effective date of any such rules, (i) Defendants shall comply fully and
14 completely with all applicable requirements of such rules and (ii) telephone calls
15 that are permitted by such rules do not constitute a violation of this Order if
16 Defendants satisfy all the applicable requirements of such rules.

17
18 **II. CHANGES TO THE TELEMARKETING SALES RULE AND ITS
19 ENFORCEMENT**

20 The requirements in Paragraph I of this Order are subject to the following
21 conditions:

22 A. If the Commission promulgates rules that, in whole or part, modify
23 or supersede the Telemarketing Sales Rule, then, on and after the effective date
24 of any such rules, Defendants and their Representatives shall comply fully and
25 completely with all applicable requirements of such rules, and any violation of
26 the modified or superseding rules also constitutes a violation of this Order;
27

1 B. Conduct otherwise prohibited by this Order shall not be considered
2 a violation of this Order if:

3 1. The conduct is permitted (a) under the Commission's
4 November 17, 2004, announcement that it would forbear from bringing any
5 enforcement action for violation of the Telemarketing Sales Rule's call
6 abandonment prohibition, 16 C.F.R. § 310.4(b)(1)(iv), in relation to prerecorded
7 telemarketing calls placed to consumers with an established business
8 relationship, subject to certain "safe harbor" requirements specified in the
9 proposed rule announcement, 69 Fed. Reg. 67,287, 67,290 (Nov. 17, 2004); or
10 (b) under any other announcement by the Commission adopting a policy to
11 forebear bringing enforcement actions with respect to the conduct prohibited by
12 the Telemarketing Sales Rule; or (c) under a rule or rules that, in whole or in
13 part, modify or supersede the Telemarketing Sales Rule; *and if*

14 2. The pertinent enforcement policy, rule or rules is in effect
15 when the conduct occurs; and if

16 3. Defendants and their Representatives satisfy all the
17 applicable requirements of the pertinent enforcement policy, rule or rules.
18

19 **III. CIVIL PENALTY AND CONDITIONAL SUSPENSION**

20 A. Judgment in the amount of Three-Million Dollars (\$3,000,000.00)
21 is hereby entered against Defendants Voice-Mail Broadcasting Corporation and
22 Jesse Crowe, jointly and severally, as a civil penalty, pursuant to Section
23 5(m)(1)(A) of the FTC Act, 15 U.S.C. § 45(m)(1)(A). Upon payment to the
24 Treasurer of the United States of the amount provided in Subparagraph III.B of
25 this Order, the remainder of the civil penalty judgment shall be suspended
26 subject to the conditions set forth in Subparagraph III.C of this Order.
27

1 B. Prior to July 18, 2007, or concurrently with their execution of this
2 Order, Defendants Voice-Mail Broadcasting Corporation and Jesse Crowe shall
3 transfer One-Hundred-Eighty-Thousand Dollars (\$180,000.00), as non-
4 suspended civil penalty payment, to their attorney, who shall hold the entire sum
5 for no purpose other than payment to the Treasurer of the United States after
6 entry of this Order by the Court. Within five (5) days of receipt of notice of the
7 entry of this Order, Defendants' attorney shall transfer such civil penalty
8 payment in the form of a wire transfer or certified or cashier's check made
9 payable to the Treasurer of the United States. The check or written
10 confirmation of the wire transfer shall be delivered to: Director, Office of
11 Consumer Litigation, U.S. Department of Justice Civil Division, P.O. Box 386,
12 Washington, DC 20044. The cover letter accompanying the check shall include
13 the title of this litigation and a reference to DJ# 102-3440. Such transfer by
14 Defendants' attorney shall constitute partial satisfaction of the judgment.

15 C. Plaintiff's agreement to the civil penalty for Voice-Mail
16 Broadcasting Corporation and Jesse Crowe is expressly premised upon the
17 truthfulness, accuracy and completeness of sworn financial statements and
18 supporting documents submitted to the FTC by these Defendants, namely those
19 signed and dated July 11, 2007, which include material information upon which
20 Plaintiff relied in negotiating and agreeing to this Order. If, upon motion by
21 Plaintiff, this Court finds that these Defendants have failed to disclose any
22 material asset or materially misstated the value of any asset in the financial
23 statements and related documents described above, or have made any other
24 material misstatement or omission in the financial statements and related
25 documents described above, the Court shall lift the suspension and require
26 payment of civil penalty in the full amount of the judgment (\$3,000,000.00),
27 less the sum of all amounts paid to the Treasurer of the United States pursuant

1 to Subparagraph B of this Paragraph. *Provided, however,* that in all other
2 respects this Order shall remain in full force and effect, unless otherwise
3 ordered by the Court.

4 5 **IV. ENFORCEMENT AND COLLECTION**

6 A. In accordance with 31 U.S.C. § 7701, Defendants are hereby
7 required, unless they have done so already, to furnish to Plaintiff and the FTC
8 their respective taxpayer identifying numbers (social security numbers or
9 employer identification numbers) which shall be used for purposes of collecting
10 and reporting on any delinquent amount arising out of Defendants' relationship
11 with the government.

12 B. If Defendants fail to pay fully the amount due pursuant to this
13 Order, Defendants shall cooperate fully with Plaintiff and the Commission and
14 their agents in all attempts to collect the judgment. In such an event,
15 Defendants agree to provide Plaintiff and the Commission with their federal and
16 state tax returns for the preceding two years, and to complete new standard-form
17 financial disclosure forms fully and accurately within ten (10) business days of
18 receiving a request from Plaintiff or the Commission to do so. Defendants
19 further authorize Plaintiff and the Commission to verify all information
20 provided on their financial disclosure forms with all appropriate third parties,
21 including, but not limited to, financial institutions.

22 C. Defendants agree that the facts as alleged in the complaint filed in
23 this action shall be taken as true, without further proof, in any subsequent
24 proceedings by or on behalf of the Commission to enforce this Order or collect
25 the judgment, including a nondischargeability complaint in any bankruptcy
26 proceeding.

1 D. If proceedings are instituted to lift the suspension imposed by this
2 Paragraph, such proceedings are in addition to, and not in lieu of, any other civil
3 or criminal remedies that may be provided by law, including any other
4 proceedings the Plaintiff may initiate to enforce this Order.

5 **RECORD KEEPING PROVISIONS**

6 **IT IS FURTHER ORDERED** that for a period of five (5) years from the
7 date of entry of this Order, each Defendant, and its successors and assigns, shall
8 maintain and make available to the Plaintiff or the FTC, within seven (7) days
9 of the receipt of a written request, business records demonstrating compliance
10 with the terms and provisions of this Order.

11 12 **V. DISTRIBUTION OF ORDER BY DEFENDANTS AND 13 ACKNOWLEDGMENTS OF RECEIPT**

14 **IT IS FURTHER ORDERED** that each Defendant, and its successors and
15 assigns, shall within thirty (30) days of the entry of this Order, provide a copy of
16 this Order, including Appendix A, to all of their owners, principals, members,
17 officers, and directors, as well as managers, agents, servants, employees, and
18 attorneys having decision-making authority with respect to the subject matter of
19 this Order; secure from each such person a signed statement acknowledging
20 receipt of a copy of this Order; and shall, within ten (10) days of complying
21 with this Paragraph, file an affidavit with the Court and serve the FTC, by
22 mailing a copy thereof, to the Associate Director for Enforcement, Federal
23 Trade Commission, 601 New Jersey Avenue, N.W., Washington, D.C. 20580,
24 setting forth the fact and manner of their compliance, including the name and
25 title of each person to whom a copy of the Order has been provided.

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VI. NOTIFICATION OF BUSINESS CHANGES

IT IS FURTHER ORDERED that the Corporate Defendant, and its successors and assigns, shall notify the Associate Director for Enforcement, Federal Trade Commission, 601 New Jersey Avenue, N.W., Washington, D.C. 20580, at least thirty (30) days prior to any change in their business, including, but not limited to, merger, incorporation, dissolution, assignment, or sale, which results in the emergence of a successor corporation, the creation or dissolution of a subsidiary or parent, or any other change, which may affect such Defendant's obligations under this Order.

VII. NOTIFICATION OF INDIVIDUAL DEFENDANT'S AFFILIATIONS

IT IS FURTHER ORDERED that Defendant Jesse Crowe shall, for a period of five (5) years from the date of entry of this Order, notify Associate Director for Enforcement, Federal Trade Commission, 601 New Jersey Avenue, N.W., Washington, D.C. 20580, within thirty (30) days of his affiliation with a new business whose activities include telemarketing or of his affiliation with a new business or employment in which his own duties and responsibilities involve telemarketing. For purposes of this paragraph, "affiliation" means (a) serving as an officer, director, trustee, manager or consultant for the business; (b) being employed by the business; (c) agreeing to market or solicit customers for the business in exchange for compensation; (d) providing advice, supervision or guidance on how to conduct the telemarketing activities of the business; or (e) purchasing an ownership interest in the business, making a loan to the business, or otherwise investing funds in the business that represent more than five percent (5%) of the stock or equity of the business.

1 **VIII. COMMUNICATION WITH DEFENDANTS**

2 **IT IS FURTHER ORDERED** that for the purposes of compliance
3 reporting, if undersigned counsel no longer represents a Defendant, Plaintiff and
4 the FTC are authorized to communicate directly with such Defendant.

5
6 **IX. FEES AND COSTS**

7 **IT IS FURTHER ORDERED** that each party to this Order hereby
8 agrees to bear its own costs and attorneys' fees incurred in connection with this
9 action.

10 **X. SEVERABILITY**

11 **IT IS FURTHER ORDERED** that the provisions of this Order are
12 separate and severable from one another. If any provision is stayed or
13 determined to be invalid, the remaining provisions shall remain in full force and
14 effect.

15 **XI. RETENTION OF JURISDICTION**

16 **IT IS FURTHER ORDERED** that this Court shall retain jurisdiction of
17 this matter for purposes of construction, modification and enforcement of this
18 Order.

19 **XII. COMPLETE SETTLEMENT**


20 The parties, by their respective counsel, hereby consent to entry of the
21 foregoing Order which shall constitute a final judgment and order in this matter.
22 The parties further stipulate and agree that the entry of the foregoing Order shall
23 constitute a full, complete and final settlement of this action.

1 **JUDGMENT IS THEREFORE ENTERED** in favor of Plaintiff and
2 against Defendants, pursuant to all the terms and conditions recited above.

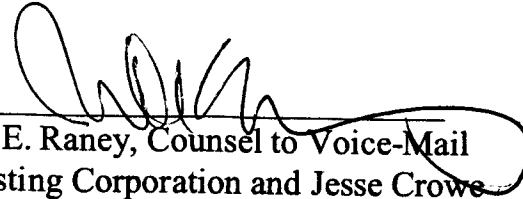
3 SO ORDERED this day of , 2008.
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6 _____
7 UNITED STATES DISTRICT JUDGE
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1 **FOR THE DEFENDANTS VOICE-MAIL BROADCASTING**
2 **CORPORATION AND JESSE CROWE:**

3
4
5 
6 Jesse Crowe, individually and
7 on behalf of Voice-Mail
8 Broadcasting Corporation

Dated: July 11, 2007

9
10 
11 William E. Raney, Counsel to Voice-Mail
12 Broadcasting Corporation and Jesse Crowe
13 Copelevitz & Canter, LLC
14 310 W. 20th Street, Suite 300
15 Kansas City, Missouri 64108
16 (816) 472-9000 *phone*
17 (816) 472-5000 *fax*

Dated: July 12, 2007

1 Dated: January 28, 2008

2 OF COUNSEL:
3 LOIS C. GREISMAN
4 Associate Director
5 Division of Marketing Practices
6 FEDERAL TRADE
7 COMMISSION

8 MICHAEL E. TANKERSLEY
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11 FEDERAL TRADE
12 COMMISSION
13 600 Pennsylvania Ave., N.W., Rm.
14 292
15 Washington, DC 20580
16 202-326-3302 *phone*
17 202-326-3395 *fax*


Respectfully submitted,

FOR THE UNITED STATES OF
AMERICA

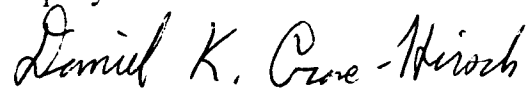
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ALTERNATIVE FUELED VEHICLE BUYERS GUIDE

Before Selecting An Alternative Fueled Vehicle Consider:

- FUEL TYPE AND AVAILABILITY:** Know which fuel(s) power this vehicle. Determine whether refueling and/or recharging facilities that meet your driving needs are readily available.
- OPERATING COSTS:** Fuel and maintenance costs for AFVs differ from gasoline or diesel-fueled vehicles and can vary considerably. Visit www.fueleconomy.gov.
- PERFORMANCE/CONVENIENCE:** Vehicles powered by different fuels differ in their ability to start a cold engine, how long it takes to refill the vehicle's tank to full capacity, acceleration rates, and refueling methods.
- ENERGY SECURITY/RENEWABILITY:** Consider where and how the fuel powering this vehicle is typically produced.
- EMISSIONS:** Emissions are an important factor. For more information about how the vehicle you are considering compares to others, visit www.epa.gov/greenvehicle.

Additional Information

DEPARTMENT OF ENERGY (DOE)
 For more information about AFVs, contact DOE's National Alternative Fuels Hotline, 1-800-423-1DOE, or visit DOE's Alternative Fuels Data Center website, www.afdc.doe.gov.

NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION (NHTSA)
 For more information about vehicle safety, contact NHTSA's Auto Safety Hotline, 1-800-424-8393.

The information on this label is required by the Federal Trade Commission, 16 CFR Part 308.
 For more information call toll-free (877) FTC-HELP or visit www.ftc.gov.

← 7 inches →

Figure 6

[60 FR 26955, May 19, 1995, as amended at 69 FR 55339, Sept. 14, 2004]

**PART 310—TELEMARKETING SALES
 RULE**

- Sec.
- 310.1 Scope of regulations in this part.
 - 310.2 Definitions.
 - 310.3 Deceptive telemarketing acts or practices.
 - 310.4 Abusive telemarketing acts or practices.
 - 310.5 Recordkeeping requirements.
 - 310.6 Exemptions.
 - 310.7 Actions by states and private persons.

- 310.8 Fee for access to the National Do Not Call Registry.
- 310.9 Severability.

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

16 CFR Ch. I (1-1-07 Edition)

§ 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 pays¹ for goods or services offered, failing to disclose

¹When 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

Continued

§310.3

16 CFR Ch. I (1-1-07 Edition)

truthfully, in a clear and conspicuous manner, 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 the sales offer;²

(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

directing a customer to have a courier pick up payment or authorization for payment.

²For 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.

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:

(i) Express written authorization by the customer or donor, which includes the customer's or donor's signature;⁵

(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;

³Truth in Lending Act, 15 U.S.C. 1601 *et seq.*, and Regulation Z, 12 CFR part 226.

⁴Electronic Fund Transfer Act, 15 U.S.C. 1693 *et seq.*, and Regulation E, 12 CFR part 205.

⁵For 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.

(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 signature⁶ of that person; or

(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

⁶For 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.

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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-one (31) 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

(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

⁷This 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.

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.

[68 FR 4669, Jan. 29, 2003, as amended at 69 FR 16373, Mar. 29, 2004]

§ 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

(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

⁸For 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.

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

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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 non-durable 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 non-durable 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

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this Rule or otherwise to prevent telephone calls to telephone numbers on the registry.

[68 FR 45144, July 31, 2003, as amended at 69 FR 45585, July 30, 2004; 70 FR 43280, July 27, 2005; 71 FR 43054, July 31, 2006]

§ 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.

PART 311—TEST PROCEDURES AND LABELING STANDARDS FOR RECYCLED OIL

Sec.	
311.1	Definitions.
311.2	Stayed or invalid parts.
311.3	Preemption.
311.4	Testing.
311.5	Labeling.
311.6	Prohibited acts.

AUTHORITY: 42 U.S.C. 6363(d).

SOURCE: 60 FR 55421, Oct. 31, 1995, unless otherwise noted.

§ 311.1 Definitions.

As used in this part:

(a) *Manufacturer* means any person who re-refines or otherwise processes used oil to remove physical or chemical impurities acquired through use or who blends such re-refined or otherwise processed used oil with new oil or additives.

(b) *New oil* means any synthetic oil or oil that has been refined from crude oil and which has not been used and may or may not contain additives. Such term does not include used oil or recycled oil.

(c) *Processed used oil* means re-refined or otherwise processed used oil or blend of oil, consisting of such re-refined or otherwise processed used oil and new oil or additives.

(d) *Recycled oil* means processed used oil that the manufacturer has determined, pursuant to section 311.4 of this part, is substantially equivalent to new oil for use as engine oil.

(e) *Used oil* means any synthetic oil or oil that has been refined from crude oil, which has been used and, as a result of such use, has been contami-

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nated by physical or chemical impurities.

(f) *Re-refined oil* means used oil from which physical and chemical contaminants acquired through use have been removed.

§ 311.2 Stayed or invalid parts.

If any part of this rule is stayed or held invalid, the rest of it will remain in force.

§ 311.3 Preemption.

No law, regulation, or order of any State or political subdivision thereof may apply, or remain applicable, to any container of recycled oil, if such law, regulation, or order requires any container of recycled oil, which container bears a label in accordance with the terms of § 311.5 of this part, to bear any label with respect to the comparative characteristics of such recycled oil with new oil that is not identical to that permitted by § 311.5 of this part.

§ 311.4 Testing.

To determine the substantial equivalency of processed used oil with new oil for use as engine oil, manufacturers or their designees must use the test procedures that were reported to the Commission by the National Institute of Standards and Technology ("NIST") on July 27, 1995, entitled "Engine Oil Licensing and Certification System," American Petroleum Institute ("API") Publication 1509, Thirteenth Edition, January, 1995. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of API Publication 1509, "Engine Oil Licensing and Certification System," may be obtained from the American Petroleum Institute, 1220 L Street, NW., Washington, DC 20005, or may be inspected at the Federal Trade Commission, Public Reference Room, room 130, 600 Pennsylvania Avenue, NW., Washington, DC, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to: http://www.archives.gov/federal_register/

REASONS FOR SETTLEMENT

This statement accompanies the Stipulated Judgment and Order for Permanent Injunction ("Consent Decree") executed by defendants Voice-Mail Broadcasting Corporation ("VMBC") and Jesse Crowe (collectively "defendants"). The Consent Decree enjoins defendants from violating the Telemarketing Sales Rule, 16 C.F.R. Part 310 ("TSR"), including its prohibition on abandoned calls. The Consent Decree also provides for a civil penalty judgment of \$3 million, partially suspended, and a payment of \$180,000 toward that judgment.

Pursuant to Section 5(m)(3) of the Federal Trade Commission Act, as amended (15 U.S.C. § 45(m)(3)), the Federal Trade Commission ("Commission") hereby sets forth its reasons for settlement by entry of a Consent Decree and injunction:

The Commission believes that the entry of a judgment of \$3 million in civil penalties, partially suspended, and payment of \$180,000 toward this judgment, constitutes an appropriate amount upon which to base a settlement. The provisions enjoining defendants from failing to comply with the TSR, including its prohibition on abandoned calls, should assure defendants' future compliance with the law. With the entry of such Consent Decree, the time and expense of litigation will be avoided.

For the foregoing reasons, the Commission believes that the settlement by entry of the attached Consent Decree with VMBC and Jesse Crowe is justified and well within the public interest.