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Jerry Cerasale
Senior Vice President,
Government Affairs

April 18, 2011

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
Room TW-A325
445 12 Street, NW
Washington, DC 20554

Re: WC Docket No. 11-39

Dear Secretary Dortch:

The Direct Marketing Association (DMA) appreciates this opportunity to respond to the Federal Communications Commission's (FCC or Commission) Notice of Proposed Rulemaking (NPRM) implementing the Truth in Caller ID Act of 2009. DMA represents over 2,400 companies that either market directly with consumers via all channels of communication or support those marketing companies. Telephone marketing remains an important channel for multichannel marketers.

DMA supported the Truth in Caller ID Act and is pleased that the FCC is establishing rules to avoid the spoofing and abuse of Caller ID technology by unscrupulous individuals and companies. The NPRM focuses on potential harm to consumers from fraudulent use of Caller ID technology. DMA agrees. However, the fraudulent use in many instances harms legitimate marketers. The unscrupulous are unlawfully assuming the identities of well-known, legitimate telemarketers so that consumers will be more likely to answer the telephone. Moreover, they fraudulently avoid providing viable do-not-call options for those consumers which DMA believes significantly reduces consumer trust in telemarketing generally. In essence, those fraudulent companies and individuals are stealing legitimate marketers identity—corporate identity theft.

Corporate identity theft poses a significant problem for legitimate marketers. Consumers become angry at the illegal marketing tactics fraudulently undertaken under the victimized company's name. The brand is then tarnished. Winning back an angry consumer is a difficult and expensive enterprise which is often unsuccessful. Victimized

DMA members have difficulty responding to corporate identity theft issues with consumers because they cannot determine who has stolen their identity.

Legitimate marketers whose identities have been hijacked can be a significant resource to the FCC and other law enforcement entities all of whom have limited resources. DMA believes that the FCC should establish rules (probably in conjunction with the Federal Trade Commission) to require Caller ID service providers to be able to trace calls and to reveal the calling party in the case of fraudulent use of Caller ID. One of the parties to whom the information should be provided is the victimized company whose identity was stolen. Such a rule would significantly increase the resources available to locate and penalize the fraudulent individuals since victims of corporate identity theft have a significant incentive to stop the fraud.

Moreover, DMA also has been receiving an increased number of consumer complaints alleging that telemarketers are calling their home with a truncated Caller ID, no Caller ID or a non working number displayed, and if the consumer answers the phone, the caller refuses to state who was calling. The consumers are very angry because they cannot inform law enforcement or self-regulatory programs who is the culprit. FCC should look to assist both victimized marketers and consumers by requiring the providers of the voice service to disclose who made the call.

Another area where the Commission could assist victimized companies is the complaint data housed by the Federal Trade Commission. If victimized companies had limited access to the complaint database, those companies could have earlier warning of potential corporate identity theft and be prepared better to respond to complaining consumers. The Commission should work with the FTC to open the FTC database to victimized companies. Their efforts to find the thieves would begin sooner as well.

Proposed Rule

General Comment

DMA believes the proposed rule is well crafted. In particular, we are pleased that the rule applies to an entity causing a fraudulent or misleading transmission or display of a Caller ID. Under the proposed rule a telemarketer who transmits a proper Caller ID that happens to become incorrect during transmission or display has not violated the rule. DMA strongly agrees with that principle. We also believe that the rule should apply to any fraudulent application of the *69 service which some consumers utilize to return a call. We want to point out to the Commission two specific instances where DMA members have found problems concerning the correct display of Caller ID and *69 services. When consumers use the *69 feature, the number called back may be truncated, and the consumer is not connected to the correct party. Also in some areas of the country toll free number Caller ID displays can also be truncated. These are areas for FCC consumer education to help consumers understand better the current marketplace.

In addition, DMA is pleased that the proposed rule allows telemarketers to adjust the Caller ID information transmitted to a number that is answered by representatives who are trained to assist the consumer. Without that flexibility consumers could be faced with calling a trunk line number that would be perpetually busy during normal business hours. That would be harmful to both the consumer and the telemarketer as consumer frustration and anger would build.

Another area that DMA believes the Commission could expand the proposed rule's coverage is to require that the Caller ID information transmitted by a telemarketer be a number that the recipient may call to have her/his phone number be placed on the telemarketer's company specific do-not-call list. This is a requirement in both the DMA's Guidelines for Ethical Marketing and the FTC's Telemarketing Sales Rule. We believe including this requirement in the rule would provide greater protection for consumers and for legitimate telemarketers.

Expansion to VoIP

DMA agrees with the expansion of the rule to cover all voice transmission technologies. The choice of technology should not alter the ethical and legal requirements for telemarketers. If the rule did not cover VoIP or other technologies, it would create an avenue for the unscrupulous to exploit consumers and to undermine any consumer trust in the telephone channel for legitimate marketers.

Spoofing of Caller ID Is Fraud

The Commission requested comments on whether or not the "intent to defraud, cause harm, or wrongfully obtain anything of value" adequately described the prohibited actions intended by the rule. DMA members are concerned with spoofing of their brand names and phone numbers by fraudulent telemarketers—as noted above, corporate identity theft. We believe that the rule covers spoofing of corporate Caller ID since the unscrupulous marketer has taken intentionally another's Caller ID information and caused harm to the victim's brand. Of course, if the Commission added spoofing as a specific violation of the rule, DMA would not object.

Blocking Caller ID

DMA agrees with part 64.1604 (c) of the proposed rule. There are safety and other legitimate reasons to allow callers to block the display of Caller ID information. However, there is no legitimate reason for telemarketers to block their Caller ID information. That prohibition on telemarketers is consistent with DMA ethical guidelines and the FTC's Telemarketing Sales rule. It should remain in the rule.

Incorporating DMA's Comments to FTC Rulemaking

As the Commission is aware, the FTC issued an Advance Notice of Proposed Rulemaking concerning Caller ID display. DMA filed Comments with the FTC on

January 28, 2011. Those comments are attached and are part of these comments to the Commission.

We thank you for the opportunity to submit these comments and look forward to working with the Commission on these issues. Please do not hesitate to contact me with any questions at 202-861-2423 or jcerasale@the-dma.org.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Jerry Cerasale", with a stylized flourish extending to the right.

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January 28, 2011

Mr. Donald S. Clark
Secretary
Federal Trade Commission
Room H-135 (Annex N)
600 Pennsylvania Avenue, NW
Washington, DC 20580

Re: Comments on the Advance Notice of Proposed Rulemaking Concerning
Caller Identification, Matter P104405

Dear Secretary Clark:

The Direct Marketing Association (DMA) appreciates this opportunity to respond to the Federal Trade Commission's (FTC or Commission) Advance Notice of Proposed Rulemaking (ANPRM). DMA represents over 2,400 companies that either market directly with consumers via all channels of communication or support those marketing companies. Telephone marketing remains an important channel for multichannel marketers.

Just as DMA supported the Truth in Caller ID Act, DMA is pleased that the FTC is examining the spoofing and abuse of Caller ID technology by unscrupulous individuals and companies. The ANPRM focuses on potential harm to consumers from fraudulent use of Caller ID technology. DMA agrees. However, the fraudulent use in many instances harms legitimate marketers. The unscrupulous are trafficking on the reputation of those legitimate marketers so that consumers will answer the phone. Moreover, they fraudulently avoid providing viable do-not-call options for those consumers. In essence, those fraudulent companies and individuals are stealing legitimate marketers' identity—corporate identity theft.

Corporate identity theft poses a significant problem for legitimate marketers. Consumers become angry at the illegal marketing tactics fraudulently undertaken under the victimized company's name. The brand is then tarnished. Winning back an angry consumer is a difficult and expensive enterprise which is often unsuccessful. Victimized DMA members have difficulty responding to corporate identity theft issues with consumers because they cannot determine who has stolen their identity.

Legitimate marketers whose identities have been hijacked can be a significant resource to the FTC and other law enforcement entities all of whom have limited resources. The

ANPRM discusses the issue of preventing disclosure of information about the calling party. However, DMA believes that the FTC should establish rules (probably in conjunction with the Federal Communications Commission) to require Caller ID service providers to be able to trace calls and to reveal the calling party in the case of fraudulent use of Caller ID. One of the parties to whom the information should be provided is the victimized company whose identity was stolen. Such a rule would significantly increase the resources available to locate and penalize the fraudulent individuals since victims of corporate identity theft have a significant incentive to stop the fraud.

Another area where the Commission could assist victimized companies is the complaint data housed by the Commission. If victimized companies had limited access to the complaint database, those companies could have earlier warning of potential corporate identity theft and be prepared better to respond to complaining consumers. Their efforts to find the thieves would begin sooner as well.

In response to some of the Commission's specific questions:

Blocking Calls

A rule requiring telephone service providers to block calls where information on the source of the call is unavailable, where the caller has spoofed an ID previously would be very helpful. However, a rule requiring telephone service providers to block calls using a Caller ID that has been spoofed would penalize the victim since calls from the victim legitimately using its Caller ID would be blocked.

Breadth of Enhanced Caller ID

First, approximately 35% of households have Caller ID. Second, DMA members have no problem implementing and using enhanced Caller ID services. However, Caller ID and enhanced Caller ID are two different products for some telephone companies. Since the caller's number is provided as part of the call data stream, it is provided to the terminating carrier at no charge. However, the name associated with the calling number must be queried at a cost to the terminating carrier. Hence, some carriers choose not to provide the name in all situations. In addition, the Commission should be aware that there remain very small pockets of the country that are served by telephone companies that cannot display a name with a toll free number. Thus, enhanced Caller ID for those areas is not available for toll free numbers. DMA members have also found in some areas of the country that the Caller ID phone number might be truncated. Therefore, we believe that the rule need not be changed at this time. Caller ID technology has advanced considerably since 2003, but it is not yet used nationwide. The FTC could require transmission of the enhanced Caller ID, but not the receipt of such.

There are two other technical issues of which the Commission should be aware. When consumers use the *69 feature, the number called back is truncated, and the consumer is not connected to the correct party. Also in some areas of the country toll free number displays can also be truncated. These are areas for FTC consumer education to help consumers understand better the current marketplace.

Harmonization with the Federal Communications Commission

DMA members have had no problems complying with FTC and FCC regulations, and, thus, we do not think any change in rule is required.

Caller ID Display--Phone Number

A consumer should be able to call the number displayed by Caller ID to request to be placed on the company's do-not-call list. After calling the number the consumer should also know on which company's do-not-call list he/she has been placed. Requiring that a displayed phone number be listed in a publicly available directory does not advance listing on a do-not-call registry. Moreover, if a consumer is using Caller ID to screen telephone calls, the decision whether or not to answer must be made more quickly than the time required to check the public phone directory. Marketers also use numerous customer service telephone numbers in order to provide the correct information to consumers. For example, a telemarketer working for numerous clients may have a different number displayed on Caller ID so that a consumer who calls that number will know what marketer called and on whose do-not-call list the consumer's name and number have been placed. A public directory requirement would thwart those efforts.

A requirement that the displayed number be have both an area code and a prefix that are associated with the physical location or principal place of business of the telemarketer or seller would not enhance the ability of the consumer to know who is calling and on whose do-not-call list he/she has been placed. Such a requirement would bar the use of toll free number displays which DMA believes to be anti-consumer.

A requirement that the displayed number provide prompt and easy communication with a live operator would be a very costly endeavor with little consumer protection benefit. If an automated answering service provides the consumer an easy and accurate option to be placed on the company's do-not-call list, DMA believes that there is no legal need for a live operator, particularly a prompt transfer to one. If there is another reason for a live operator or a prompt transfer to one, the Commission needs to explain the legal necessity for that requirement further before DMA can adequately comment.

Requiring the displayed number to be the same as the telephone number the marketer uses in mail or other advertising has the same problems as requiring the number to be in a public directory described above. DMA believes it does not improve the ability of the consumer to stop calls from the marketer and should not be promulgated.

Caller ID Display--Name

DMA agrees that telemarketers and sellers (marketers) should be able to use trade names and acronyms and abbreviations. With a 15 character limit to displayed names, this change makes sense. Moreover, trade or brand names may be more familiar to a consumer than company name. Use of these should remain a choice, not a requirement. However, DMA believes the Commission should examine whether or not to create a list

of authorized abbreviations. Unlimited use of abbreviations or acronyms might be an avenue for the unscrupulous to spoof Caller IDs with similar looking abbreviations or acronyms.

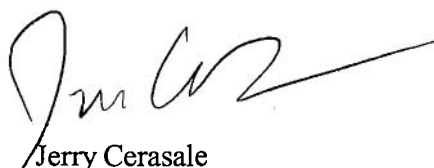
DMA also agrees that the FTC should allow telemarketers and sellers to display the name of the Seller and a phone number of the telemarketer. This would allow greater freedom for those using the telephone for sales to show consumers on whose behalf the call is made and allow the seller to use the customer service expertise of the telemarketer by displaying the telemarketer's phone number. We want to reiterate that this should be an option, not a requirement. Flexibility for sellers and telemarketers to meet their business and technological needs is important to ensure that the consumer has correct information on his/her display and that her/his call back to the displayed number will allow her/him to be placed on the company's do-not-call list.

Oral Disclosures

DMA members, both sellers and telemarketers, believe that the oral disclosure requirements of the Telemarketing Sales Rule are adequate and working well. Therefore, no amendment is necessary.

We thank you for the opportunity to submit these comments and look forward to working with the Commission on these issues. Please do not hesitate to contact me with any questions at 202-861-2423 or jcerasale@the-dma.org.

Respectfully submitted,

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