



# WORLD PRIVACY FORUM

## **Comments of the World Privacy Forum to the Federal Trade Commission Regarding Telemarketing Sales Rule (16 CFR part 310—NPRM) (Project No. R411001)**

*Via [regulations.gov](https://www.regulations.gov)*

Federal Trade Commission  
Office of the Secretary  
600 Pennsylvania Avenue NW  
Suite CC-5610 (Annex B)  
Washington, DC 20580

August 2, 2022

Thank you for the opportunity to submit comments on the Notice of Proposed Rulemaking regarding proposed amendments to the Telemarketing Sales Rule (part 310), 87 FR 33677. <https://www.federalregister.gov/documents/2022/06/03/2022-09914/telemarketing-sales-rule#footnote-25-p33679> The World Privacy Forum is a non-profit public interest research group that focuses on data privacy issues, including those relating to technology, health, biometrics, and other topics. Our research, testimony, consumer education, and other materials can be found on our webpage, [www.worldprivacyforum.org](http://www.worldprivacyforum.org).

Generally, WPF supports nearly all of the proposed changes in the NPRM. However, we are concerned about expanded collection and retention of consumer data without commensurate mandatory protections of that data from potential abuse and resale. We urge the Commission to do more in this area, and in a few others, which we discuss in these comments.

### **I. Proposed clarification of the 2008 Robocall amendment for charitable solicitations, and new definition for the term “previous donor”**

WPF supports the proposed additions regarding Section 310.5(A)(6), “previous donor,” which will serve to clarify the exemption for charitable donations. WPF adds here that some charities utilize data brokers for marketing to lists of consumers who may or may not have been donors, but rather have been solicited before. This type of “solicitation based on prior solicitation” activity becomes less likely and less defensible with the addition of the proposed new definition of “previous donor,” which will effectively close what has been a fairly significant loophole.

Regarding the proposed 2-year time limit regarding the existence of an “established relationship,” WPF supports this time limit so that there are clear bounds for telemarketing activity.

## **II. Proposed changes to TSR record keeping provisions**

WPF generally supports the proposed amendments to the § 310.5 record keeping provisions.

Specifically:

### **A. Section 310.5 (a)(1) Substantially different advertising materials and each unique prerecorded message**

We support the proposed change that would require telemarketers to keep records of each unique prerecorded message used for telemarketing, inclusive of those calls and recording using a variety of digital and other sound technologies. We encourage the FTC to be broad in its technical language around digital recordings, and ensure that an unintended carve out is not created by overly narrow descriptions of digital technologies in the telemarketing space. For example, instead of using the term “soundboard technology” we encourage the additional term “digital soundboard.” We also encourage the FTC to require telemarketers to keep a copy of the full range of materials involved in the advertising campaign, including transcripts.

### **B. Section 310.5 (A)(2) Call detail records and WPF request for attention to voice recognition and other biometric analysis in telemarketing**

We support the proposed requirement that call detail records are required to be kept, inclusive of number called, the number used to make the call and the number set to display on the receiving device, time, date, duration of the call, disposition of the call, and the full details of any transferred call, including to whom and to what business entities the call was transferred. Without these details, it will be nearly impossible to trace fraudulent activity.

We make a further request: voice biometrics in call centers is a rapidly emerging market, and includes activities such as voice recognition or voice emotion analysis. We request that the FTC require telemarketers to retain a record of whether or not voice biometrics - either recognition or voice emotion analysis software or tools — were used on any calls, and whether a consumer’s record was notated with any inferences from such analysis, and whether any such analysis is shared with other parties, and whether the telemarketer or a vendor retains the consumers’ voiceprints.

### **C. Section 310.5(A)(9) Other service providers**

We support the proposed record keeping requirement that would require sellers and telemarketers to keep records of all service providers the telemarketer uses to deliver outbound calls in each telemarketing campaign. We agree with the inclusion of soundboard technology providers, but encourage a broadening of the term to include a wider range digital voice technology solutions, as the innovation in this sector has been significant. Our concern is that the specificity of the term “soundboard technology providers” is not inclusive enough in the current environment. Again, we encourage the addition of a more modern term such as “digital soundboards” to the term “soundboard technology.”

## **D. Sections 310(A)(10) and (11) DNC and entity-specific DNC**

It is important to ensure the integrity of the Do Not Call Registry. We strongly support the proposed changes regarding the DNC registry regarding access and record keeping. The new record keeping requirements would mandate that telemarketers track both the history of the specific DNC list they are using as well as recording the name of the telemarketer or seller who accessed the registry, the campaign for which it was accessed, and the data of access. We urge that records are also kept regarding how many times each telemarketer accessed the list, or parts of the list.

## **III. Proposed modification of existing record keeping requirements**

### **A. Time period to keep records**

WPF supports changing the length of time records must be kept from 2 to 5 years.

### **B. Prize recipients**

The Commission's proposal to expand the demographic information kept on prize recipients is not out of line with modern business practices. However, with this expansion, we urge the FTC to require that this information is kept in an encrypted state when not in use, as the addition of name, phone number, and address does create more risk to the individual consumers were it to be subject to unauthorized access or use.

### **C. Customer records**

We do not support the Commission's proposal to expand the customer data kept by telemarketers. The commission has not made commensurate requirements for telemarketers to keep the data encrypted, safe, and to prohibit telemarketers from reselling or sharing the data for other purposes. This data is a trove for data brokers and other telemarketers. If the Commission would like to add this requirement, then commensurate requirements for a mandatory privacy policy protecting such data and prohibiting its resale should also be required. Otherwise, the Commission may be unintentionally creating a new and very challenging security and privacy issue for consumers that would be quite challenging for consumers to resolve.

### **D. Records of consent**

Section 310.5 (a)(5) of the TSR already requires sellers or telemarketers to keep records regarding consumers' express informed consent or agreement as defined by the TSR. This particular aspect of the TSR has been abused in numerous ways, and we have meaningful concerns regarding how consents are effectuated in the TSR context.

To remedy some of the problems, we agree with the updated definition the Commission has proposed for what constitutes a complete record of the consent.

WPF urges the Commission to also update how consumers may withdraw or revoke consent, and create responsibilities for telemarketers to provide a clear opportunity to revoke consent in each communication.

#### **E. Safe harbor for incomplete or inaccurate records kept pursuant to §310.5 (A)(2)**

We do not object to the safe harbor proposed for the record keeping requirements. The safe harbor is narrow enough to allow companies to make the kinds of mistakes that occur in day to day business, and provides incentives to correct the errors.

#### **F. Modification of the B2B exemption**

WPF agrees with narrowing the B2B exemption to require that B2B telemarketing calls comply with the TSR prohibition regarding misrepresentation and prohibition on false or misleading statements. There is no downside to this particular update — the FTC Act already prohibits such activities.

#### **IV. Conclusion**

WPF appreciates the Commission's thoughtful work in this proposal. We do remain concerned about three items in particular:

- The expansion of consumer records kept without commensurate requirements for not selling, sharing, or otherwise using those records
- The narrowness of some of the technical language around soundboard technology. We encourage the addition of broader terms such as digital soundboards.
- The proposal does not incorporate the modern uses of voice biometrics in its analysis of telemarketing activities. This is an extremely important analysis to add to the rule. The proposal could be as simple as requiring telemarketing companies to notify consumers of the use of such technologies, and to keep records of what technologies were used, why, and when.

Thank you for your consideration. If we can assist in answering any questions, we stand ready to assist.

Respectfully submitted,

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