

ALERT

FTC Issues Public Notice Seeking Comment on its Telemarketing Sales Rule

July 31, 2014

The Federal Trade Commission (FTC or Commission) today released a Public Notice seeking comment on the Telemarketing Sales Rule (TSR) as part of a "systematic review of all current Commission regulations and guides." "Without limiting the scope of issues on which it is seeking comment," the FTC identified certain general areas of interest on which it seeks comment, including "the continuing need for the TSR and its economic impact, the effect of the Rule on deception in telemarketing, and the interaction of the Rule with other regulations." In addition, the FTC seeks comment on a number of more specific issues, including preacquired account information, negative option marketing, and a potential expansion of the TSR's recordkeeping obligations. To facilitate public comment on these general and specific issues, the FTC included in its Public Notice 38 particular questions (complete with sub-parts) on which it seeks comment. In light of the ongoing class action explosion under the Telephone Consumer Protection Act (TCPA), a similar telemarketing statute administered by the Federal Communications Commission, the FTC's Public Notice may be a useful vehicle for urging reform of telemarketing regulation that is chilling innovation in the Internet and mobile economy.

Comments are due on or before October 14, 2014.

Background on the TCPA: Adopted in 1995, the FTC's TSR is intended to protect consumers from deceptive and abusive telemarketing practices. It requires certain disclosures and prohibits misrepresentations during telemarketing calls and other practices deemed to be abusive. The TSR applies to "telemarketing," which is defined under the Telemarketing Act and the TSR to mean "a plan, program, or campaign which is conducted to induce the purchase of

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goods or services or a charitable contribution, by use of one or more telephones and which involves more than one interstate telephone call." Although there are some exclusions to the FTC's jurisdiction, the TSR thus applies to a wide array of businesses across numerous industries.