

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

**FEDERAL TRADE COMMISSION, *et al.*,**

**Plaintiffs,**

**v.**

**REPAIR ALL PC, LLC, *et al.*,**

**Defendants.**

**CASE NO. 1:17CV0869**

**JUDGE DAN AARON POLSTER**

**JUDGMENT AND ORDER FOR PERMANENT INJUNCTION  
AND MONETARY JUDGMENT AS TO DEFENDANT I FIX PC DBA TECHERS247**

AND NOW, on this WK day of HFHPEHU, 201, upon consideration of Plaintiffs' Motion for Default Judgment Against I Fix PC, dba Techers247 ("Techers247"), and the entire record in this case, JUDGMENT IS ENTERED in favor of Plaintiffs Federal Trade Commission ("FTC") and the State of Ohio, Office of Attorney General against Defendant Techers247.

**THEREFORE, IT IS ORDERED, ADJUDGED, AND DECREED** as follows:

**FINDINGS**

1. This Court has jurisdiction over the subject matter of this action and has jurisdiction over Defendant Techers247.
2. Venue in the Northern District of Ohio is proper as to Defendant Techers247.
3. The activities alleged in the Complaint were in or affecting commerce, as defined in Section 4 of the FTC Act, 15 U.S.C. § 44.
4. The Complaint states claims upon which relief may be granted against Defendant Techers247 under Section 13(b) of the Federal Trade Commission Act ("FTC Act"),

15 U.S.C. § 53(b), and the Ohio Consumer Sales Practices Act, R.C. § 1345.01 et seq. (“CSPA”).

5. Defendant Techers247 received proper service of process pursuant to Rule 4 of the Federal Rules of Civil Procedure.

6. Defendant Techers247 failed to file an answer to the Complaint or otherwise defend in this action. The Clerk of Court properly entered default against Defendant Techers247 on November 15, 2017.

7. Because of Defendant Techers247’s default, the factual allegations in the Complaint are taken as true as to Defendant Techers247.

8. Defendant Techers247 operated as a common enterprise with the other corporate defendants while engaged in the illegal acts and practices alleged in the Complaint. Because of this, Defendant Techers247 is jointly and severally liable for the acts and practices of all of them.

9. As alleged in Count I of the Complaint, in numerous instances and in the course of marketing, offering for sale, and selling computer technical support services and security software, Defendant Techers247 made false or misleading representations that it is part of or affiliated with well-known U.S. technology companies, such as Microsoft or Apple, or is certified or authorized by these companies to service their products. These constitute deceptive acts or practices that violate Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

10. As alleged in Count II of the Complaint, in numerous instances and in the course of marketing, offering for sale, and selling computer technical support services and security software, Defendant Techers247 made false, misleading, or unsubstantiated representations that it has detected security or performance issues on consumers’ computers, including system



Online Assist LLC, Datadeck LLC, I Fix PC, also d/b/a Techers247, Jessica Marie Serrano, Dishant Khanna, Mohit Malik, Romil Bhatia, Lalit Chadha, and Roopkala Chadha.

2. **“Person”** means a natural person, organization, or other legal entity, including a corporation, limited liability company, partnership, proprietorship, association, cooperative, government or governmental subdivision or agency, or any other group or combination acting as an entity.

3. **“Tech Support Product or Service”** means any plan, program, or software, marketed to repair, maintain, or improve a computer’s performance or security, including, but not limited to, registry cleaners, anti-virus programs, virus and malware removal, and computer or software diagnostic services.

4. **“Telemarketing”** means any plan, program, or campaign that is conducted to induce the purchase of goods or services by use of one or more telephones, and which involves a



B. That Defendant Techers247 has detected security or performance issues on consumers' computers, including, but not limited to, system errors, viruses, spyware, malware, or the presence of hackers;

C. Any material aspect of the performance, efficacy, nature, or central characteristics of any goods and services;

D. Any material aspect of the nature or terms of any refund, cancellation, exchange, or repurchase policies; or

E. Any other material fact.

#### **IV. PROHIBITION AGAINST COLLECTING ON ACCOUNTS**

**IT IS FURTHER ORDERED** that Defendant Techers247, its officers, agents, employees, and attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, are permanently restrained and enjoined from attempting to collect, collecting, or assigning any right to collect payment for any Tech Support Product or Service.

**t.**



A. Failing to provide sufficient customer information to enable Plaintiffs to efficiently administer consumer redress. If a representative of Plaintiffs requests in writing any information related to redress, Defendant Techers247 must provide it, in the form reasonably prescribed by Plaintiffs, within 14 days;

B. Disclosing, using, or benefitting from customer information, including the name, address, telephone number, email address, social security number, other identifying information, or any data that enables access to a customer's account (including a credit card, bank account, or other financial account), that Defendant Techers247 obtained prior to entry of this Order; and

C. Failing to destroy such customer information in all forms in their possession, custody, or control within 30 days after receipt of written direction to do so from a representative of the FTC.

*Provided, however,* that customer information need not be disposed of, and may be disclosed, to the extent requested by a government agency or required by law, regulation, or court order.

## **VII. COOPERATION**

**IT IS FURTHER ORDERED** that Defendant Techers247 must fully cooperate with representatives of Plaintiffs in this case and in



## IX. COMPLIANCE REPORTING

**IT IS FURTHER ORDERED** that Defendant Techers247 make timely submissions to the Commission:

A. One year after entry of this Order, Defendant Techers247 must submit a compliance report, sworn under penalty of perjury:

1. Defendant Techers247 must:

a. Identify the primary physical, postal, and email address and telephone number, as designated points of contact, which representatives of Plaintiffs may use to communicate with it;

b. Identify all of its businesses by all of their names, telephone numbers, and physical, postal, email, and Internet addresses;

c. Describe the activities of each business, including the goods and services offered, the means of advertising, marketing, and sales, and the involvement of any other defendant

d. Describe in detail whether and how it is in compliance with each Section of this Order; and

e. Provide a copy of each Order Acknowledgment obtained pursuant to this Order, unless previously submitted to the Commission.

B. For 12 years after entry of this Order, Defendant Techers247 must submit a compliance notice, sworn under penalty of perjury, within 14 days of any change in the following:

1. Any designated point of contact; or

2. The structure of any entity that it has any ownership interest in or controls directly or indirectly that may affect compliance obligations arising under this Order, including: creation, merger, sale, or dissolution of the entity or any subsidiary, parent, or affiliate that engages in any acts or practices subject to this Order.

C.

## **X. RECORDKEEPING**

**IT IS FURTHER ORDERED** that Defendant Techers247 must create certain records for 12 years after entry of the Order, and retain each such record for 5 years. Specifically, Defendant Techers247 for any business that it, individually or collectively with any other Defendants, is a majority owner or controls directly or indirectly, must create and retain the following records:

- A. Accounting records showing the reve

further leave of court, using any of the procedures prescribed by Federal Rules of Civil Procedure 29, 30 (including telephonic depositions), 31, 33, 34, 36, 45, and 69.

B. For matters concerning this Order, Plaintiffs are authorized to communicate directly with Defendant Techers247. Defendant Techers247 must permit representatives of Plaintiffs to interview any employee or other person affiliated with any Defendant Techers247 who has agreed to such an interview. The person interviewed may have counsel present.

C. Plaintiffs may use all other lawful means, including posing, through its representatives as consumers, suppliers, or other individuals or entities, to Defendant Techers247 or any individual or entity affiliated with Defendant Techers247 without the necessity of identification or prior notice. Nothing in this Order limits the Commission's lawful use of compulsory process, Bh6rsunt To DSctlons 9

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# **ATTACHMENT A**

## **TELEMARKETING SALES RULE 16 C.F.R. PART 310**

### Section Contents

- § 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.

### **§ 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.

- institution.
- (g) *Cash reload mechanism* makes it possible to convert cash into an electronic (as defined in section 106(2) of the Electronic Signatures in Global and National Commerce Act (15 U.S.C. 7006(2)) form that a person can use to add money to a general-use prepaid card, as defined in Regulation E, 12 CFR part 1005.2, or an online account with a payment intermediary. For purposes of this definition, a cash reload mechanism (1) is purchased by a person on a prepaid basis, (2) enables access to the funds via an authorization code or other security measure, and (3) is not itself a general-use prepaid card.
  - (h) *Charitable contribution* means any donation or gift of money or any other thing of value.
  - (i) *Commission* means the Federal Trade Commission.
  - (j) *Credit* means the right granted by a creditor to a debtor to defer payment of debt or to incur debt and defer its payment.
  - (k) *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.
  - (l) *Credit card sales draft* means any record or evidence of a credit card transaction.
  - (m) *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.
  - (n) *Customer* means any person who is or may be required to pay for goods or services offered through telemarketing.
  - (o) *Debt relief service* means any program or service represented, directly or by implication, to renegotiate, settle, or in any way alter the terms of payment or other terms of the debt between a person and one or more unsecured creditors or debt collectors, including, but not limited to, a reduction in the balance, interest rate, or fees owed by a person to an unsecured creditor or debt collector.
  - (p) *Donor* means any person solicited to make a charitable contribution.
  - (q) *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.
  - (r) *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.
  - (s) *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.
  - (t) *Material* means likely to affect a person's choice of, or conduct regarding, goods or services or a charitable contribution.
  - (u) *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.
  - (v) *Merchant agreement* means a written contract between a merchant and an acquirer to



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.

- (hh) *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 consents to pay<sup>1</sup> for goods or services offered, failing to disclose 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;<sup>2</sup>
    - (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

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<sup>1</sup> When 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 directing a customer to have a courier pick up payment or authorization for payment. In the case of debt relief services, the seller or telemarketer must make the disclosures required by § 310.3(a)(1) before the consumer enrolls in an offered program.

<sup>2</sup> For offers of consumer credit products subject to the Truth in Lending Act, 15 U.S.C. 1601 et seq., and Regulation Z, 12 CFR Part 1026, 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.

- 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;
- (vii) If the offer includes a negative option feature, all material terms and 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); and
- (viii) In the sale of any debt relief service:
  - (A) the amount of time necessary to achieve the represented results, and to the extent that the service

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

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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) An accurate description, clearly and conspicuously stated, of the goods or services or charitable contribution for which payment authorization is sought;
  - (B) The number of debits, charges, or payments (if more than one);
  - (C) The date(s) the debit(s), charge(s), or payment(s) will be submitted for payment;
  - (D) The amount(s) of the debit(s), charge(s), or payment(s);
  - (E) The customer's or donor's name;
  - (F) 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;
  - (G) A telephone number for customer or donor inquiry that is answered during normal business hours; and
  - (H) 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.*

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 cr



- (6) 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;
- (7) Causing billing information to be submitted for payment, directly or indirectly, without the express informed consent

- (10) Accepting from a customer or donor, directly or indirectly, a cash-to-cash money transfer or cash reload mechanism as payment for goods or services offered or sold through telemarketing or as a charitable contribution solicited or sought through telemarketing.
- (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)(A), including, but not limited to, harassing any person who makes such a request; hanging up on that person; failing to honor the request; requiring the person to listen to a sales pitch before accepting the request; assessing a charge or fee for honoring the request; requiring a person to call a different number to submit the request; and requiring the person to identify the seller making the call or on whose behalf the call is made;
    - (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 or telemarketer
        - (i) Can demonstrate that the seller 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 signature<sup>6</sup> of that person; or
        - (ii) Can demonstrate that the seller has an established business relationship with such person, and that

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<sup>6</sup> For 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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- message. The mechanism must:
- (1) Automatically add the number called to the seller's entity-specific Do Not Call list;
  - (2) Once invoked, immediately disconnect the call; and
  - (3) Be available for use at any time during the message; and
- (B) In the case of a call that could be answered by an answering machine or voicemail service, that the person called can use a toll-free telephone number to assert a Do Not Call request pursuant to § 310.4(b)(1)(iii)(A). The number provided must connect directly to an automated interactive voice or keypress-activated opt-out mechanism that:
- (1) Automatically adds the number called to the seller's entity-specific Do Not Call list;
  - (2) Immediately thereafter disconnects the call; and
  - (3) Is accessible at any time throughout the duration of the telemarketing campaign; and
- (iii) Complies with all other requirements of this part and other applicable federal and state laws.
- (C) Any call that complies with all applicable requirements of this paragraph (v) shall not be deemed to violate § 310.4(b)(1)(iv) of this part.
- (D) This paragraph (v) shall not apply to any outbound telephone call that delivers a prerecorded healthcare message made by, or on behalf of, a covered entity or its business associate, as those terms are defined in the HIPAA Privacy Rule, 45 CFR 160.103.
- (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 and not of failure to obtain any information necessary to comply with a request pursuant to § 310.4(b)(1)(iii)(A) not to receive further calls by or on behalf of a seller or charitable organization.
- (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 over the duration of a single calling campaign, if less than 30 days, or separately over each successive 30-day period or portion thereof that the campaign continues.
  - (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)
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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 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," ("Franchise Rule") 16 CFR Part 436, and the sale of business opportunities subject to the Commission's Rule entitled "Disclosure Requirements and Prohibitions Concerning Business Opportunities," ("Business Opportunity Rule") 16 CFR Part 437, *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:
    - (i) Calls initiated by a customer or donor in response to an advertisement relating to investment opportunities, debt relief services, business opportunities other than business arrangements covered by the Franchise Rule or Business Opportunity Rule, or advertisements involving offers for goods or services described in §§ 310.3(a)(1)(vi) or 310.4(a)(2)-(4);
    - (ii) Calls to sellers or telemarketers that do not comply with the prohibitions in §§ 310.4(a)(9) or (10); or
    - (iii) 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



**§ 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.

# **ATTACHMENT B**

**1345.02 Unfair or deceptive acts or practices**

(A) No supplier shall commit an unfair or deceptive act or practice in connection with a consumer transaction

Such an unfair or deceptive act or practice by a supplier violates this section whether it occurs before, during, or after the transaction.

(B) Without limiting the scope of division (A) of this section, the act or practice of a supplier in representing any of the following is deceptive:

(1) That the subject of a consumer transaction has sponsorship, approval, performance characteristics

[REDACTED]

commercial mobile radio service insofar as such provider is engaged in the provision of commercial mobile radio service. However, when that exclusion no longer is in effect, division (B)(1) of this section shall apply to such

[REDACTED]

### 1345.03 Unconscionable consumer sales acts or practices.

(A) No supplier shall commit an unconscionable act or practice in connection with a consumer transaction. Such an unconscionable act or practice by a supplier violates this section whether it occurs before, during, or after the transaction.

(B) In determining whether an act or practice is unconscionable, the following circumstances shall be taken into consideration:

(1) Whether the supplier has knowingly taken advantage of the inability of the consumer reasonably to protect the consumer's interests because of the consumer's physical or mental infirmities, ignorance, illiteracy, or inability to understand the language of an agreement;

(2) Whether the supplier knew at the time the consumer transaction was entered into that the price was substantially in excess of the price at which similar property or services were readily obtainable in similar

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

consumer transactions by like consumers;

(3) Whether the supplier knew at the time the consumer transaction was entered into of the inability of the consumer to receive a substantial benefit from the subject of the consumer transaction;

(4) Whether the supplier knew at the time the consumer transaction was entered into that there was no reasonable probability of payment of the obligation in full by the consumer;

(5) Whether the supplier required the consumer to enter into a consumer transaction on terms the supplier knew were substantially one-sided in favor of the supplier;

(6) Whether the supplier knowingly made a misleading statement of opinion on which the consumer was likely to rely to the consumer's detriment;

(7) Whether the supplier has, without justification, refused to make a refund in cash or by check for a returned item that was purchased with cash or by check, unless the supplier had conspicuously posted in the establishment