

CONCURRING STATEMENT OF COMMISSIONER MAUREEN K. OHLHAUSEN
In the Matter of CallFire
FTC File No. 122-3011
May 14, 2014

I voted to refer the accompanying proposed ~~dein~~ and stipulated final order to the Department of Justice, settling allegations ~~CallFire~~ provided substantial assistance or support to sellers or telemarketers that were ~~relating~~ the Telemarketing Sales Rule (TSR)¹. Evidence shows that CallFire knew, ~~or~~ consciously avoided knowing² that its clients were violating the TSR by, among other things, initiating outbound ~~leph~~ phone calls that delivered prerecorded messages to induce the purchase of goods ~~services~~ (robocalls) ~~whi~~out the recipient's permission.

Robocalls for non-marketing purposes ~~are~~ and can be used³ to consumers by providing notice of things like flight delays ~~prescription~~ refills. Since 2009, however, the TSR has prohibited making robocalls for ~~marketing~~ purposes without the recipients' written permission. Despite the TSR's requirements, ~~CallFire~~ encouraged clients to use its robocalling service to market and generate ~~large~~ numbers of leads for ~~mortgage~~ modification services and other telemarketers and was ~~deliberately~~ indifferent to whether these clients had the call recipients' written permission. Further, CallFire actually ~~in~~cluded on its website a sample prerecorded marketing message ~~that~~ would not be delivered legally⁴ a recipient without prior written authorization.

I would not support imposing liability on ~~a~~ party merely for creating or providing a product or service with legal use ~~as~~ absent reason to believe ~~that~~ the party knows or consciously avoids knowing that its client is using it to ~~violate~~ the TSR. In this matter, however, I support the imposition of liability because CallFire actively encouraged clients to use its robocall service to target large numbers of ~~consumers~~ for marketing purposes, ~~not~~ without any inquiry to whether its clients were complying with the TSR.

¹ See generally 16 C.F.R. 310 (2012) (prohibiting deceptive and abusive telemarketing acts or practices); 16 C.F.R. 310(b) (2012) (stating that to assist and facilitate violations of the TSR is itself a TSR violation).

² 16 C.F.R. 310.3(b) (defining assisting and facilitating as "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" the TSR).