

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 complaint and stipulated final order to the Department of Justice, settling allegations that CallFire provided substantial assistance or support to sellers or telemarketers that were violating the Telemarketing Sales Rule (TSR).¹ Evidence shows that CallFire knew, or consciously avoided knowing,² that its clients were violating the TSR by, among other things, initiating outbound telephone calls that delivered prerecorded messages to induce the purchase of goods or services (robocalls) without the recipient's permission.

Robocalls for non-marketing purposes are legal and can be useful to consumers by providing notice of things like flight delays or 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 included on its website a sample prerecorded marketing message that could not be delivered legally to 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 uses, 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, 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).