

card, credit plate, bank service card, banking card, check guarantee card, charge card, or debit card, or by any other name, issued with or without a fee for the use of the cardholder in obtaining money, goods, services, or anything else of value.

(g) *Credit card sales draft* means any record or evidence of a credit card transaction, including but not limited to any paper, sales record, instrument, or other writing, or any electronic or magnetic transmission or record.

(h) *Credit card system* means any method or procedure used to generate, transmit, or process for payment a credit card sales draft.

(i) *Customer* means any person who is or may be required to pay for goods or services offered through telemarketing.

(j) *Goods or services* means any goods or services, including but not limited to: Any investment opportunity; any business venture; any certificate or coupon which may be later exchanged for a product or service; any membership; any license right; any timeshare or campground interest; any offer to list a timeshare or campground interest for sale; any real property interest; any offer to improve a person's credit record, history, rating, or to obtain an extension of credit; any charitable service promoted in conjunction with an offer of a prize, chance to win a prize, or the opportunity to purchase any other goods or services; any service promoted by an employment agency; any multi-level marketing service; and any offer of advice or assistance to a person.

(k) *Investment opportunity* means anything, tangible or intangible, excluding a business venture, that is offered, offered for sale, sold, or traded (1) to be held, wholly or in part, for purposes of profit or income; or (2) based wholly or in part on representations, either express or implied, about past, present or future income, profit, or appreciation. The term "investment opportunity" includes, but is not limited to, any business arrangement where persons acquire, or purportedly acquire, government-issued licenses or interests in one or more businesses derived from the possession of such licenses.

(l) *Material* means likely to affect a person's choice of, or conduct regarding, goods or services.

(m) *Merchant* means a person who is authorized under a written contract with an acquirer to honor or accept, transmit, or process credit cards in payment for goods or services.

(n) *Merchant agreement* means a written contract between a merchant and an acquirer authorizing the

merchant to honor or accept, transmit, or process credit cards in payment for goods or services.

(o) *Person* means any individual, group, unincorporated association, limited or general partnership, corporation, or other business entity.

(p) *Premium* means anything offered or given, independent of chance, to customers as an incentive to purchase goods or services offered through telemarketing.

(q) *Prize* means anything offered, or purportedly offered, to a person at no cost and with no obligation to purchase goods or services and given, or purportedly given, by chance.

(r) *Prize promotion* means:

(1) A sweepstakes or other game of chance; or

(2) An oral or written representation that a person has won, has been selected to receive, or may be eligible to receive a prize or purported prize.

(s) *Seller* means any person who, in connection with telemarketing, provides or offers to provide goods or services in exchange for consideration or a donation.

(t) *State* means any State of the United States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, and any territory or possession of the United States.

(u) *Telemarketer* means any person who, in connection with telemarketing, initiates or receives a telephonic communication from a customer.

(v) *Telemarketing* means a plan, program, or campaign which is conducted to induce payment for goods or services by use of one or more telephones (including the use of a facsimile machine, computer modem, or any other telephonic medium) and which involves more than one interstate telephone call or connection. The term includes, but is not limited to, calls initiated by persons in response to postcards, brochures, advertisements, or any other printed, audio, video, cinematic or electronic communications by or on behalf of the seller. The term does not include the solicitation of sales through the mailing of a catalog which: Contains a written description or illustration of the goods or services offered for sale; includes the business address of the seller; includes multiple pages of written material or illustrations; and has been issued not less frequently than once a year, when the person making the solicitation does not solicit customers by telephone but only receives calls initiated by customers in response to the catalog and during those calls takes orders only without further solicitation. For purposes of the previous sentence, the

term "further solicitation" does 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.

(w) *Telephone solicitation* means the initiation of a telephone call by a telemarketer to induce payment for goods or services.

(x) *Verifiable retail sales price* means the actual, bona fide price at which one or more retailers, in the area of the seller's principal place of business, has made a substantial number of sales, which the seller has documented.

§ 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 payment is requested for goods or services offered, failing to disclose any of the following information in the same manner and form as the payment request:

(i) The total costs, terms, and material restrictions, limitations, or conditions of receiving any goods or services;

(ii) The quantity of any goods or services; and

(iii) All material terms and conditions of the seller's refund, cancellation, exchange, or repurchase policies, including, if applicable, a statement that no such policies exist;

(2) Misrepresenting, directly or by implication, any of the following:

(i) The total costs, terms, or material restrictions, limitations, or conditions of receiving any goods or services;

(ii) The quantity of any goods or services;

(iii) Any material aspect of the performance, efficacy, or central characteristics of any goods or services;

(iv) The duration of any offer made;

(v) The nature or terms of the seller's refund, cancellation, exchange, or repurchase policies;

(vi) That any person has been selected to receive a prize;

(vii) That a premium is a prize;

(viii) The odds of winning any prize;

(ix) That a seller or telemarketer is in compliance with any Federal, State, or local law, statute, regulation, or ordinance;

(x) That compliance with any Federal, State, or local law, statute, regulation, or ordinance constitutes an endorsement or approval of the seller's or telemarketer's business or conduct;

(xi) Any affiliation, association, connection, or relationship with law