the Telemarketing Act states that "no activity which is outside the jurisdiction of [the FTC Act] shall be affected by this Act." ¹³² Accordingly, as explicitly stated in Section 310.1 of the revised proposed rule, the jurisdictional limitations of Section 4 of the FTC Act, including those regarding nonprofit organizations, will apply to the Telemarketing Sales Rule.

(b) Verification calls. The initially proposed Rule stated that if a caller verifies a telemarketing sale, that caller must repeat certain disclosures.133 Many commenters argued forcefully that this Section was unnecessary and unduly burdensome, requiring duplicative disclosures that would add to the cost of the call and annoy potential customers.¹³⁴ In addition, commenters stated that this disclosure would discourage firms from making verification calls, due to increased costs.135 After considering these comments, the Commission has determined that requiring duplicative verification disclosures is unnecessary and would unfairly burden legitimate telemarketers. It has therefore deleted this Section from the revised proposed Rule.

(c) Outbound telephone calls that include a prize promotion. The initially proposed Rule required the following three additional oral disclosures for any telemarketing that includes a prize promotion: (1) The fact that no purchase or payment is necessary to win; (2) the verifiable retail sales price of each prize offered, or a statement that the retail sales price of the prize offered is less than \$20.00; and (3) the odds of winning each prize offered.¹³⁶

The comments elicited by these requirements stressed the unnecessary costs that would result from duplicative disclosure requirements.¹³⁷ The Commission wishes to avoid imposing unnecessary requirements for oral disclosures that increase both the length and the cost of calls without a very clear

132 15 U.S.C. 6105(a).

consumer benefit.138 Because the benefit to be derived from repeated disclosures of the same information is questionable, the Commission has narrowed the amount of information that must be disclosed orally. Oral disclosures now encompass only information that promises a clear-cut consumer benefit and that is not outweighed by the costs it imposes on legitimate industry. The revised proposed Rule requires a telemarketer making an outbound telephone call which includes a prize promotion to disclose clearly, in addition to the other disclosures required under revised proposed Rule Section 310.4(d), the fact that no purchase is necessary to win.

The Commission believes that this disclosure is so critical to consumer protection in a prize promotion that it should be stated during an outbound telephone call. In addition, the Commission, in response to concerns raised by NAAG, has specified in the revised proposed Rule that this disclosure must be made before the prize is described to the person called.¹³⁹ Such a disclosure will clearly inform consumers that a true, legitimate "prize" awarded in a game of chance does not require any purchase.140 This disclosure will help dispel the false information provided during fraudulent prize promotions that a consumer must purchase some item in order to win the 'fabulous'' prize offered. In order to make this "no purchase necessary" disclosure meaningful, the revised proposed Rule also requires the telemarketer to disclose the no-purchase entry method for the prize promotion, if requested by the person called.

(d) Outbound telephone calls that *include a premium.* The initially proposed Rule required any telemarketing that includes an offer of a premium to make the additional disclosure of the verifiable retail sales price of such premium or comparable item, or a statement that the retail sales price of the premium is less than \$20.00.¹⁴¹ A number of commenters stated that this Section should be eliminated. They claimed that many premiums offered by legitimate telemarketers generally are not available for retail sale, and attempting to determine a retail sales price may be difficult and costly. They also predicted

¹³⁸ See, e.g., MPA at 21-22.

that this added cost may result in the elimination of premiums being offered, to the detriment of consumers.¹⁴²

The Commission is persuaded by these arguments; in and of itself, nondisclosure of the value of an offered premium is not likely to be injurious to consumers, and imposition of the potential costs associated with such a disclosure requirement is not justified. The prohibition against misrepresentations in Section 310.3 is sufficient to protect consumers against false and misleading claims about the value of a premium.

5. Other Required Disclosures. The initially proposed Rule prohibited any seller or telemarketer conducting a prize promotion from requesting or accepting any payment from a person without first providing that person with a written disclosure, in duplicate, and receiving from that person a written acknowledgement that the person has read the disclosure.143 Numerous commenters stated that such a written acknowledgement requirement would effectively ban prize promotions in telemarketing sales by increasing costs and negating the efficiency of those sales.¹⁴⁴ The Commission is persuaded that such an outcome would limit consumers' choices and would be inconsistent with Commission policy. Prize promotions in telemarketing, in and of themselves, are not deceptive, do not cause injury to consumers, and may, in fact, provide consumer benefits. The Commission has determined that these requirements would likely produce nominal consumer benefits that would be outweighed by the potential detrimental effects, and has therefore dropped them from the revised proposed Rule.

The initially proposed Rule also imposed written disclosure requirements on investment opportunities very similar to those for prize promotions. Specifically, any seller or telemarketer selling an investment opportunity was prohibited from requesting or accepting any payment from a person without first providing that person with a written disclosure, in duplicate, and receiving from that person a written acknowledgement that the person had read the disclosure.¹⁴⁵ Industry

v. The Baylis Co., No. 94–0017–S-LMB (D. Idaho 1994); FTC v. NCH, Inc., No. CV-S–94–00138–LDG (LRL) (D. Nev. 1994); FTC v. International Charity Consultants, No. CV-S–94–00195–DWH (LRL) (D. Nev. 1994); FTC v. Heritage Publishing, No. LR-C– 94–416 (E.D. Ark. 1994). In addition, the Commission may sue a sham charity that is actually a for-profit enterprise. FTC v. Voices for Freedom, No. 91–1542–A (E.D. Va. July 13, 1992) (consent decree entered).

 $^{^{133}\}operatorname{Section}$ 310.4(d)(2) of the initially proposed Rule.

¹³⁴ ATA at 9; MPA at 20–21; ARDA at 33; NAA at 19; Spiegel at 5; ALIC at 3; MSSC at 22.

¹³⁵ AT&T at 22–23; MCI at 12; PCH at 4; SBTC at 13.

¹³⁶ Initially proposed Rule Section 310.4(d)(3).¹³⁷ See generally PMAA, DMA; IMSP.

¹³⁹ NAAG at 28-29.

¹⁴⁰ See e.g., 18 U.S.C. 1301. Additionally, PMAA, stated during the workshop that such a requirement would not be overly burdensome and would accurately distinguish deceptive prize promotions from legitimate prize promotions. Tr. at 608–10 (PMAA).

¹⁴¹ Initially proposed Rule Section 310.4(d)(4).

¹⁴² See, e.g., MPA at 22–23; NAA at 19–20; MasterCard at 13–14; MBNA at 1.

¹⁴³ Initially proposed Rule Section 310.4(e)(1). ¹⁴⁴ See, e.g., DMA at 33; MPA at 23–24; NRF at 38; PMAA at 49–51; CUCI at 10; IBM at 26; ITI at 8–10; Spiegel at 5–6; ADS at 3; SDRA at 1. In fact, one commenter noted that 73 percent of prize *winners* do not return an affidavit permitting the distribution of prizes to them. DW&Z at 2.

¹⁴⁵ Initially proposed Rule Section 310.4(e)(2).