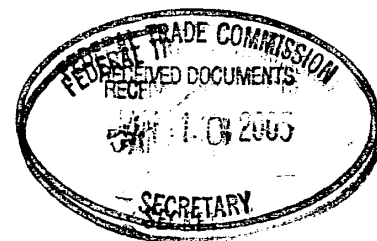


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Federal Trade Commission
Office of the Secretary
Room H-159 (Annex K)
600 Pennsylvania Avenue, N.W.
Washington, DC 20580



Re: Prerecorded Message EBR Telemarketing, Project No. R411001

Ladies and Gentlemen:

Call Command, LLC has developed technology which allows Call Command's customers to send prerecorded messages to consumers informing them of information which the customer will find helpful. Use of the technology by customers varies but includes notifications of product recalls such as automobile defects and directing targeted marketing campaigns to consumers with whom customers have an established business relationship. Call Command's customers benefit from the ability to send information to targeted consumer groups in an affordable and consumer friendly manner. Unlike calls originated by predictive dialers and other live telemarketers, this technology allows both well-intended businesses and consumers the ability to avoid hang-ups and dead air time associated with such calls.

The purposes of the comments included herein are (i) to clarify that prerecorded messages should not be considered abandoned calls and (ii) to provide an alternative business model that allows consumers to choose whether or not a prerecorded message is delivered to the consumer upon answering of the call.

Call Command's experience reflects the fact that consumers are generally receptive to the use of prerecorded messages. In fact numerous Call Command Dealer clients report significantly higher customer satisfaction ratings with the implementation of appointment reminders, service maintenance reminders and recall notifications sent to customers of automobile dealers via prerecorded messages. These dealer clients have been able to significantly reduce their costs while simultaneously increasing customer service with the use of prerecorded messages. A typical recall notification will often result in over 70% response to the message and less than 1% that opt to be placed on a Company No call List. Call Command clients generally deliver the messages to home phone numbers during the day when the overwhelming majority of calls are received by answering machines. An interactive method for placement on the Company DO NOT Call List does not address the needs of these consumers. An 800# provided in the recording that allows the consumer to request placement on the no call list properly addresses both live and machine answer.

A. Prerecorded Messages Should Not Be Considered Abandoned Calls

The restrictions on abandoned calls should not apply to the use of prerecorded messages. The FTC determined that the primary harms of abandoned calls were (1) "dead air" calls, in which there is a prolonged period of silence between a consumer answering a call and the connection of that call to a sales representative; and (2) "hang-up" calls, in which telemarketers hang up on consumers whom they have called without speaking to them. These restrictions on

abandoned calls were implemented to combat the nuisance create by predictive dialers. Prerecorded messages are not sent by predictive dialers and do not inherently implicate either one of these harms. Call-Command's message begins, on average, within 1.1 to 1.6 seconds of a consumer answering the call. As far as we can determine, hang-ups do not occur. Accordingly, the harms associated with abandoned calls are not existent in Call Command's business.

B. Proposal for Alternative Business Model Allowing Consumers to Opt Out of Receiving a Prerecorded Message and to Alternatively Make a Do Not Call Request.

Call Command proposes a very simplistic, yet practical, business model to permit consumers to choose to either receive a prerecorded message, opt out of receiving the message or to provide a company specific Do Not Call request. The message would from the start give the consumer the ability to opt out of receiving the message by pressing a key (say the number 1 key) or to alternatively press another key to either speak to a live operator or to allow the consumer to deliver a Do Not Call Request. This simple proposal would provide minimum burden on consumers yet provide a clear and concise safe harbor for businesses.

If the proposal is adopted, it will also eliminate the need for consumers to listen to lengthy disclosures at the start of a call, thereby benefiting both consumers who do not wish to hear the message and consumers who do desire to hear the message. Statistics could easily be maintained regarding the options selected by consumers, and this information is likely to be valuable to the industry and to the FTC.

Call Command respectfully requests the FTC to recognize the propriety of numerous businesses such as Call Command that send prerecorded messages for legitimate business reasons to targeted groups of consumers. Each of the purposes for sending prerecorded messages through Call Command's technology has been impliedly adopted by the FTC and the FCC, including in other contexts. For instance, the FTC recently published a final rule pursuant to the CAN-SPAM Act setting forth guidelines for determining if an e-mail message is deemed to be "commercial," "transactional" or mixed. By publishing the rule, the FTC has acknowledged its recognition of the propriety of sending "transactional" based e-mail messages. Call Command permits its customers to send prerecorded messages for many of the same purposes that are considered "transactional" based under the FTC's final rule. "Transactional" (i.e., permitted) e-mails include, among others, those that provide warranty information, product recall information or safety or security information, which are all purposes of messages delivered through the use of Call Command's technology.

In view of the foregoing, Call Command respectfully requests that the Commission concur that calls delivered by way of prerecorded messages should not be considered "abandoned calls" and that sellers who use prerecorded messages should be permitted maximum flexibility in complying with the objective of the proposed safe harbor, including establishing a greeting that permits, among other options, the consumer to opt out of receiving the message and to provide a Do Not Call request. If you have any questions regarding this comment letter, please do not hesitate to contact the undersigned at 513-792-9212.

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Very truly yours,

CALL COMMAND, LLC

By: Al Babbington
Al Babbington, CEO