UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

CONVERGYS CORPORATION COMMENTS REGARDING PRERECORDED MESSAGE EBR TELEMARKETING FTC Project No. R411001

January 10, 2005

I. Introduction

Convergys Corporation ("Convergys") submits these comments in response to the Federal Trade Commission's ("Commission" or "FTC") Notice of Proposed Rulemaking ("NPRM") released November 17, 2004. The FTC seeks to amend the Telemarketing Sales Rule ("TSR") to add a new call abandonment safe harbor at Section 310.4(b)(5) which indicates that a seller or telemarketer initiating an outbound telephone call that delivers a prerecorded message to a person with whom the seller has an established business relationship will not be liable for violating §310.4(b)(1)(iv), the TSR's prohibition against call abandonment, as long as the following four criteria are met:

1. The seller or telemarketer must allow the telephone to ring for at least 15 seconds or four rings before disconnecting an unanswered call.
2. The seller or telemarketer must play the prerecorded message within two seconds after the person's completed greeting.
3. The prerecorded message must present, "at the outset" and preceded only by the prompt oral disclosures required by the TSR, an opportunity for the called party to assert an entity specific Do Not Call request pursuant to §310.4(b)(1)(iii)(A).
4. The new safe harbor provision does not obviate or negate any other provision of the TSR or other state or federal rules.

Convergys Corporation is highly supportive of the FTC's proposed creation of a second safe harbor to allow prerecorded messages to existing business relationship consumers. Deployment of prerecorded messages is mutually beneficial and allows the seller to introduce new products, services, and special offers to existing customers. As a global leader in the customer care industry, we are able to assert that there is a market for this type of service.

From a regulatory standpoint, this amendment would bring the TSR into alignment with the Federal Communications Commission's ("FCC") Telephone Consumer Protection Act ("TCPA"). The TCPA has, for the last decade, allowed prerecorded message telemarketing to consumers with whom a seller has an established business relationship. In 2003, the FCC explicitly retained the established business relationship exemption following review of the TCPA, stating, "We believe that…such messages do not impose the same costs on recipients as, for example, facsimile messages. Therefore, we retain the exemption for established business relationship calls from the ban on prerecorded messages". [68 FR 44158 (§80) July 25, 2003] Aligning the TSR with the TCPA in this respect will eliminate any doubt that may exist in the business community regarding the simultaneous implementation of these two rules.

The FTC has specifically requested information about the cost, benefit and feasibility of criteria two, deployment of the prerecorded message within two seconds, and three, the opportunity for the called party to assert an entity specific Do Not Call request. Based on the FTC's request for additional input particular to these elements, Convergys has provided comments below under Section II, **'Two Second Rule'**, and Section III, **'Do Not Call'**. Convergys is especially interested in the Do Not Call element of the proposed safe harbor. We specifically comment on the necessity to strike the appropriate balance between the consumer's right to place an entity specific Do Not Call request and the need to retain the inherent efficiencies of the prerecorded sales call as an effective method for businesses to reach their customers.

Convergys serves top companies in telecommunications, Internet, cable and broadband services, technology, financial services, and other industries worldwide through integrated billing, employee care, and customer care services. Every day, Convergys generates more than 1.5 million individual bills in support of more than 100 million subscribers and manages over 1.7 million separate customer and employee contacts, both live and via electronic interaction. The majority of our telephone-based service offerings involve inbound telephone calls, but Convergys also offers comprehensive outbound telephone marketing services to businesses seeking to outsource these activities. Convergys employs more than 63,000 people in 62 customer contact centers and is a member of the S&P 500 and a Fortune Most Admired Company. Convergys is on the Internet at www.convergys.com and has world headquarters in Cincinnati, Ohio.

II. Two Second Rule

The FTC has proposed that, comparable to the call abandonment safe harbor found in §310.4(b)(4)(iii), the prerecorded message safe harbor would require that the consumer be connected to a prerecorded message within two seconds of the person's completed greeting. However, the FTC has also questioned whether or not the new safe harbor should be set at less than two seconds because the prerecorded message eliminates the need for predictive dialers and the time it can take to connect to a customer sales representative. The FTC stated in its NPRM that "a prerecorded message would make it unnecessary to subject a consumer who has answered a call to 'dead air' while waiting for a live sales representative…or to hang up because no sales representative becomes available".

Convergys agrees with the Commission that prerecorded messages would not be subject to the same 'dead air' that results while a consumer is transferred to a customer sales representative. However, the technology is such that the consumer would experience a slight pause based on the algorithm used to separate a live voice from that of a machine. The technology requires at least one and a half seconds to ensure the message is not launched over the voice of a person answering the phone or during the course of an answering machine message, plus several milliseconds to actually deploy the message. Because of the technology associated with identifying a live person and launching the prerecorded message, we submit that the two seconds provided as part of the second criterion of the safe harbor is an appropriate timeframe and respectfully request that it remain the measurement for the maximum amount of 'dead air' that a consumer may experience.

III. Do Not Call

The FTC has rightfully asserted that a consumer receiving a prerecorded message call should be accorded the same Do Not Call rights as a consumer receiving a telemarketing call from a live agent. The FTC has proposed, under criterion three of the prerecorded message safe harbor, that the prerecorded message present, at the outset and preceded only by the prompt oral disclosures required by the TSR, an opportunity for the called party to assert an entity specific Do Not Call request.

The FTC reviews two options that would allow the consumer to assert his or her Do Not Call right. First, and as currently permissible under FCC rules, is the option to provide a toll free number that the consumer may call to make a Do Not Call request. The FTC cites concerns in the NPRM with this method, stating, "this requires consumers to be prepared with a pen and paper at the ready when they answer the phone, to take down the number, and to place a separate call in order to assert a Do Not Call Request". Second is a method that would allow the consumer to speak with a sales representative during the call by pressing a button on their telephone keypad. The FTC states that, "this type of interactive feature…would be ideal in the established business relationship prerecorded message context as a means to protect the consumers' Do Not Call rights under the TSR". This latter method is the standard the FTC has included as part of the prerecorded message safe harbor.

While Convergys agrees that a consumer should be provided the appropriate information to assert their Do Not Call rights, we are concerned that the standard included in the proposed safe harbor, the ability for consumers to be able to connect to a live agent directly from an outbound prerecorded message, is cost prohibitive. We are specifically concerned about the significant increase in telecommunications costs, as well as the costs that come with a loss of efficiency, that accompany a move from complete automation to the ability to connect to a live agent.

Clients choose to utilize the prerecorded message because it is a cost efficient way to reach numerous existing customers within a short period of time. Requiring sellers to reincorporate live agents adds a significant cost back into the campaign; As does the telecommunications cost, which we expect would double, to maintain the number of appropriate bridges back to customer service representatives. Potentially more prohibitive is the opportunity cost that results from the comparably limited number of ports required to handle transfers to customer service representative. Convergys anticipates that the number of calls able to be made in a single day would decrease by more than 99% percent.

While Convergys cites concerns with the unreasonably high costs associated with the requirement to link a consumer directly to a live customer service representative, we believe it is possible to modify the FTC's first option, providing a number by which a consumer can assert their Do Not Call Rights. We propose an alternative that balances the efficiencies of a completely automated campaign and the need for a consumer to have the appropriate opportunity to assert his or her Do Not Call rights.

The FTC expressed its belief that it is unrealistic to expect a consumer to be ready to take down the necessary information to put their name on a Do Not Call list during an unexpected prerecorded message telemarketing call. As one remedy to this obstacle, Convergys suggests that the FTC require prerecorded sales messages to include an option at the end of the call that would allow the consumer to choose to listen to the message again. This is a common feature in prerecorded message calls and affords the consumer the necessary time to obtain a pen and paper to take down the appropriate information. Repeating the message provides the called party with time to record the number for use at his or her convenience and preserves consumer Do Not Call rights while avoiding the prohibitive costs associated with connecting a consumer to a live customer sales representative.

Convergys also points to §310.4(a)(7) of the revised TSR, which requires a telemarketer's name and number be transmitted via Caller ID for any sales call. Should the consumer be unable to take down the information during the course of the call, the telemarketer's name and number would appear on most consumers' Caller ID feature and be captured for future reference.

IV. Conclusion

Convergys is a leader in the outsourcing industry and the satisfaction of our clients and the satisfaction of their customers is our top priority. It is as a result of these key relationships that we express our support for the Commission's proposal to create a second safe harbor that would allow prerecorded messages to preexisting customers. With regard to the four specific criteria of the safe harbor, we suggest the two second rule not be lowered.

Convergys further provides an alternate solution to the necessity that consumers be able to press a key on their phones to be connected to a live service representative who would take the consumer's Do Not Call request. Namely, Convergys proposes that the option to repeat the prerecorded message would strike an appropriate balance between a consumer's desire to assert his or her Do Not Call rights and the business need to design consistent and effective marketing campaigns for its customers.

We appreciate the opportunity to comment on these important business and consumer issues. I am available to discuss Convergys' comments on this matter at the discretion of the Commission.

Respectfully Submitted:

/s/ William H. Hawkins, II, Esq.

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