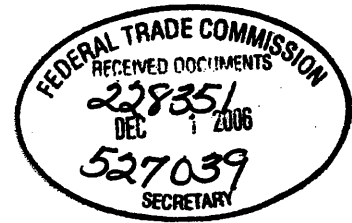


**ORIGINAL**

November 30, 2006



*Via Hand Delivery*

Mr. Donald S. Clark, Secretary  
Federal Trade Commission  
Room H-135  
600 Pennsylvania Avenue, N.W.  
Washington, D.C. 20580

**Re: TSR Prerecorded Call Prohibition and Call Abandonment Standard  
Modification, Project No. R411001**

**PETITION OF MINUTEPOLL LLC FOR CONTINUED FORBEARANCE**

MinutePoll LLC respectfully petitions the Commission to maintain its existing policy of forbearance on prerecorded telemarketing calls within an established business relationship for an extension of time of six months from the issuance of the Commission's eventual Final Rule on pre-recorded calls within an existing business relationship (EBR) in Telemarketing Sales Rule proceeding RIN# 3084-0098.<sup>1</sup> We request this extension of time only if the Final Rule contains a requirement to obtain opt-in consent for use of pre-recorded calls within an existing business relationship.

MinutePoll, founded in 1996, specializes in automated telephone and Internet surveys. In reliance upon the Commission's November 17, 2004 NPRM,<sup>2</sup> small businesses like MinutePoll have expended considerable resources to develop and implement business models that employ prerecorded calls in a fashion that is consistent with the practices that the Commission envisaged in its November 2004 NPRM. Should the Commission immediately revoke its non-enforcement policy prior to, or upon completion of the Final Rule, it would effectively compel MinutePoll to immediately shut down its operations in order to comply with the TSR. While larger companies might be able to withstand the loss of business, smaller businesses such as ours will require adequate time to adjust, as we detail below.

The proposed written consent requirement for pre-recorded calls in the Commission's October 4, 2006 NPRM is a dramatic change from the Commission's November 17, 2004 decision to forbear from enforcement actions against companies that used pre-recorded calls subject to a company-specific opt-out. In reliance on the Commission's forbearance decision, our company and many other smaller companies have based their businesses on placing these pre-recorded calls with an EBR.

As would any business, we constantly search for new services we can offer our clients or other ways to expand our business. Since the publication of the October 4, 2006 NPRM, we

<sup>1</sup> 71 FR 58716 (Oct. 4, 2006).

<sup>2</sup> 69 FR 67287 (Nov. 17, 2004).

have accelerated these efforts. We have determined that the obvious solutions are not viable for our particular business. Live operator calling, a potential substitution, is more expensive per lead and not attractive to our clients. Even if it were, we are not cost competitive with larger firms with integrated call centers. Direct mail is less effective in the markets we serve. We are working on other concepts which will take some time to refine, prove their viability, and market.

It is critical that the Commission afford businesses at least six months from the publication of the Final Rule to come into compliance. Our experience in this, and other businesses, is that a normal development and sales cycle for new products is 9 to 12 months. During this time we develop new concepts, test them, measure results, and refine execution. We must then allow time for clients to evaluate the concept, conduct their own tests, and then commit funds and ramp up to match their expenditure rates of the current programs.

Adopting a shorter compliance deadline would irreparably harm smaller businesses, since most small businesses operating in this arena would lose a substantial percentage or all of their client base within weeks of being unable to place calls. Their clients would likely flock to larger telemarketers that are already well-positioned to oversee telemarketing campaigns with live operators. This would produce greater concentration in the telemarketing industry and would favor larger firms that already use live operators or that can better bear the costs of placing calls through live operators. A six-month forbearance period from the issuance of a Final Rule mandating an opt-in to pre-recorded calls would provide an opportunity for companies such as ours to maintain current client relationships and revenue flow while working to develop new methodologies that are compliant with the Commission's Rule.

If the Commission decides to proceed with an opt-in requirement in this area, we propose that the Commission protect consumers during the transition period by enforcing its current policy requiring provision of a company-specific opt-out and clarifying that telemarketers using pre-recorded calls must provide notice of the opportunity to opt-out at the beginning of a message and afford the opportunity to opt-out by means of IVR technology.

For the reasons set forth in the comments that we are filing in response to the NPRM, we believe that the better course for protecting consumers from "coercive or abusive" calls is to require provision of an IVR opt-out at the front of pre-recorded messages for calls made within an EBR. However, if the Commission decides to require an opt-in for these pre-recorded calls, then a six month transition period from the issuance of the Final Rule is critical to competition in the telemarketing industry and can be implemented without material adverse effect on consumers.

Respectfully submitted,



Joel Margolese, President