

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

Commission's Proposal to Add Explicit Prohibition of Prerecorded Telemarketing Calls

The Commission should adopt the proposal to prohibit prerecorded telemarketing calls, excepting calls expressly permitted by the consumer in writing.

1. What is the effect (including any benefits and costs), if any, on consumers?

The Commission's proposal benefits individuals by eliminating consumer confusion and bolstering the effect of the Do Not Call list. As the multiple consumer groups highlighted, this plan protects consumer privacy, and ensures that consumers will talk with a person when they are solicited – enabling them to quickly notify a telemarketer that they wish to be removed from their list. The most troubling aspect of VMBC's original proposal was the suggestion that consumers could use a 1-800 number to request removal from the pre-recorded message database. Visions of “muzak” and endless “punch one to hear about why you don't want to be removed from our list” repetitions dance in my head. A blanket prohibition on prerecorded calling appears to be sole escape from such a 1-800 nightmare.

2. What is the impact, if any, on individual firms that must comply with the Rule?

While telemarketing firms are likely to highlight the proposal's costs, there are benefits as well. Firms may still place calls to consumers regarding airplane information, weather reports, and other informational recordings. A prohibition on prerecorded telemarketing calls increases the value of these other services because customers know in advance that a recorded message will not attempt a sale. Customers will be less likely to delete a flight reminder or a doctor's appointment recording when they know that prerecorded messages cannot contain telemarketing. While one avenue is cut off for telemarketers, the value of another service area is increased.

3. What is the impact, if any, on industry, including those who may be affected by these proposals but not obligated to comply with the Rule?

I do not have sufficient information to answer this question.

4. What changes, if any, should be made to the proposed Rule to minimize any costs to the industry, individual firms that must comply with the rule, and or consumers?

The Commission should provide explicit sample waiver language. The current Rule proposal states that prerecorded telemarketing calls must be agreed to by a consumer's written authorization. The Rule proposal states that this waiver will “evidence such person's authorization that calls made by or on behalf of a specific party may be placed to that person” and “shall include the telephone number to which the calls may be placed and the signature of that person.”

5. How would each suggested change affect the benefits that might be provided by the proposed Rule to industry, individual firms that must comply with the Rule, and/or consumers?

My proposed change would provide telemarketing firms with specific language. Firms will avoid attorney drafting costs and litigation costs over the waiver-language they use. Moreover, the Commission would ensure that the language used is clear and precise. Customers would become familiar with the Commission's waiver language. Customer familiarity with the waiver language will save consumers reading time each time they agree to a waiver. A uniform process with uniform language will help both the telemarketers and consumers.

6. How would the proposed rule affect small business entities with respect to costs, profitability, competitiveness, and employment?

Small businesses appear equally disadvantaged as large business entities by the blanket prohibition. However, my proposal that the Commission provide waiver language will help small businesses who otherwise are disadvantaged by their lack of in-house counsel in creating this type of language.

Proposal To Measure The Maximum Allowable Call Abandonment Rate Under The Existing Safe Harbor "Over The Duration Of A Single Calling Campaign, If Less Than 30 Days, Or Separately Over Each Successive 30-Day Period Or Portion Thereof That The Campaign Continues."

The Commission should reject the proposed measurement changes to the three percent standard.

1. What is the effect (including benefits and costs), if any, on consumers?

DMA's proposal to measure the three percent of permissible answered calls that may be abandoned over a thirty-day or campaign-wide period instead of over a "per day, per calling campaign" period will inevitably harm consumers.

The most troubling harm is highlighted in consumer groups' comments expressing concern that a "30-day standard would enable telemarketers to target high call abandonment rates at less valued groups of consumers, offsetting the high rates with lower abandonment rates for preferred groups" The Commission's regulations should protect the privacy of all consumers. Changing the rule protects the privacy rights of preferred consumers at the expense of less valued groups of consumers' privacy rights. We cannot allow telemarketers to determine which groups of the public "deserve" privacy at dinner time.

2. What is the impact on the individual firms that must comply with the rule?

DMA argues that under the current system, the "per day, per campaign" standard is "virtually impossible" for vendors to meet. The new rule benefits firms who wish to truly exercise their three percent; however it does so at the expense of consumers (see discussion above).

3. What is the impact, if any, on industry, including those who may be affected by these proposals but not obligated to comply with the Rule?

I do not have sufficient information to answer this question.

4. What changes, if any, should be made to the proposed Rule to minimize any costs to the industry, individual firms that must comply with the rule, and or consumers?

Clearly this Rule benefits firms at the expense of consumers. The Rule could be amended to allow a four or five percent dropped call rate “per day” instead of three percent “per 30-days.”

5. How would each suggested change affect the benefits that might be provided by the proposed Rule to industry, individual firms that must comply with the Rule, and/or consumers?

This would allow firms a more realistic opportunity to comply with the “per day” standard while simultaneously preventing firms from disproportionately burdening less valuable consumers over a longer period of time. The Commission should ensure that citizen privacy is protected equally and the “per day” rule helps the Commission meet this burden. Increasing the percentage of the allowable dropped calls “per day” allows firms to take real advantage of their “safe harbor.”

6. How would the proposed rule affect small business entities with respect to costs, profitability, competitiveness, and employment?

The proposed rule appears to help small businesses compete in the telemarketing market. Small firms are less likely to have the technology available to help them meet the rigid daily three percent standard. A more flexible measurement applied over time (30 days) will allow smaller firms to compete in the larger market.