

1. *Should the Commission include an explicit prohibition of prerecorded telemarketing calls in the TSR?* Yes. Though it seems clear, as the Commission noted, from the current language of § 310.4(b)(4) that calls intending to deliver a prerecorded message are prohibited, apparently the provision is not properly prohibiting these phone calls. In the language as is, a telemarketer may not initiate a call solely to deliver a prerecorded message: prerecorded messages are only permitted if a live telemarketer is unavailable within two seconds of the completed greeting. The proposed amendment not only clarifies the language of § 310.4(b)(4), but further protects consumers by requiring an express prior agreement *in writing* to prerecorded calls from companies with whom the consumer has an established business relationship. This language adequately protects the consumer from the breadth of the definition of “existing business relationship.” It would, however, be helpful to clarify what would constitute an agreement in writing. May the seller embed this language within a standard form contract on the back of a credit card receipt, or would the agreement be more affirmative and explicit than that? Defining “in writing” to hold the seller to a high standard is desired.
2. *Is the Commission correct in its understanding that a reasonable consumer would consider prerecorded telemarketing sales calls and prerecorded charitable solicitation calls to be coercive or abusive of his or her right to privacy?* Yes. Prerecorded calls are coercive and abusive of the right to privacy. It is extremely frustrating to receive a phone call soliciting business, but it is even more so when it is a prerecorded message. It makes the effort of stopping what I’m doing and going to answer the phone completely worthless because there is not even a live person on the other line.
3. *Does a consumer’s choice not to list his or her telephone number on the Do Not Call Registry indicate not only that he or she is willing to accept live telemarketing calls, but also prerecorded calls?* Yes. I am a member of the Do Not Call Registry, and I signed up for the Registry to stop both types of calls. How many times have I been interrupted to go to the phone, only to have it be a solicitation phone call? I have never once bought anything from these phone calls. They are simply an annoyance. The DNCR should stop both types of calls because regardless of whether it’s a live call or a prerecorded message, I have already stopped what I was doing and expended the effort to answer the phone. Since there is no way to differentiate from my end (notwithstanding the fact that neither type of call is beneficial to me), the DNCR should prohibit both types of calls.
4. *Should the Rule specify disclosures that must be made when obtaining a consumer’s express written agreement to receive such calls? If so, what disclosures are needed?* Yes. The Rule should specify that by consenting to the agreement, you are consenting to receiving prerecorded telephone calls by that company, perhaps without the opportunity to speak to a live representative. I think disclosures are also needed that a prerecorded call might tie up the telephone line even after you’ve hung up, and therefore these sorts of calls may endanger health and safety.
5. *What is the effect on consumers’ privacy interests, if any, of not applying the call abandonment safe harbor requirements to calls left on consumers’ answering machines?* Calls left on my answering machine are equally as intrusive to my privacy interests as calls to which I respond. Anything that requires me to exert effort that I wouldn’t otherwise have had to exert that I did not ask for and from which I receive no benefit is very intrusive on my privacy. If one of the purposes of these rules is to protect consumers’ privacy interests, then not applying the requirements to calls left on answering machines subverts the purpose of the rule.
6. *Are prerecorded messages left on answering machines less intrusive than prerecorded messages answered by a person?* No. Having prerecorded messages on my machine not only takes up space that could be used by messages truly important to me, but also still requires affirmative effort by me to delete these unnecessary messages.
7. *What are the costs and benefits to consumers, if any, of allowing consumers to leave prerecorded messages, as opposed to live messages, on consumers’ answering machines? Do consumers incur additional costs....? Do consumers receive additional benefits, such as lower marketing costs that are eventually passed on to them?* No. I do not receive any benefit by receiving the message on my answering machine. As noted above, receiving prerecorded messages on my answering machine still requires effort to delete the messages to free up necessary space, so the fact that I may do it in one fell swoop, as opposed to interrupting what I’m doing and answering

the phone each individual time, is irrelevant. It does not cost me more because I don't pay for the storage of messages, and my storage capacity is fortunately high. It does cost me, however, because I receive many unnecessary messages that I neither want nor need. I have never once purchased anything that has been peddled to me via the telephone. As for any additional benefit in the way of lower marketing costs that are eventually passed along, I would be passed many more savings if all forms of telemarketing were eradicated completely. To me, it seems a perfectly superfluous means of marketing.

8. *What are the costs and benefits to companies in not having to apply the call abandonment safe harbor limit to calls left on answering machines?* If companies are allowed to leave prerecorded messages willy nilly on my answering machine, then inevitably this increasingly will become a more prevalent practice. Any burden of which I am relieved in not having to actually answer the phone would simply be shifted to expending more and more time to delete unwanted messages (and let me reiterate, they are all unwanted). Allowing companies any leeway with regard to answering machines will simply shift the problem posed to consumers, rather than resolve it.
9. *Should a 30-day standard, if adopted, cover all of a telemarketer's campaigns within that period, be limited to a single campaign, or be limited to the duration of each campaign?* It should be limited to a single campaign. Allowing it to apply to all campaigns within that period would allow some campaigns to abandon more calls, while only restricting abandonments on another campaign. Averaging out across campaigns comes at the expense of at least one group of consumers. Rather than making some consumers much better off and leaving others much worse off (so that on average across campaigns, abandoned calls are less than 3%), the abandonments should be more evenly distributed across consumers. Limiting the 30-day standard, if adopted, to a single campaign would accomplish such. Furthermore, applying a 30-day standard would already be a relaxation of the current per-day standard. Further relaxing it to all campaigns within that period would be too much and would disrupt the balance that the rule is trying to accomplish. A 30-day standard may be beneficial to businesses who rely heavily on telemarketing as a means of advertising, but to allow a further relaxation would be to tip the balance in favor of the industry. This cannot occur.
10. *Are there significant efficiencies that can be obtained with a requirement to meet a 30-day standard averaged across all of a telemarketer's campaigns that cannot be obtained with a 30-day campaign-specific requirement? If so, what are they?* As I am a consumer and not a telemarketer, I am not sure.
11. *Are there technological problems that limit the ability of telemarketers who are running multiple campaigns to measure abandonment rates separately for each campaign? If so, what are they, how many telemarketers do they affect, what remedies, if any, are available, and what is the cost of such remedies?* Again, I am a consumer, not a telemarketer, and thus am not sure.
12. *Are upgrades available that can reduce the rate at which predictive dialers place calls in the case of an unexpected spike in call abandonments, so that it would not be necessary to run them manually?* See answers to 10 and 11.
13. *Would retaining a "per campaign" standard, but extending the period over which the call abandonment is measured, make the use of smaller segmented lists by small businesses and other sellers more economical?* I suppose so.
14. *What effect would the proposed change in the standard for measuring the call abandonment rate have on the number of abandoned calls that consumers receive?* 3% over 30 days, rather than per day, would increase the number of abandoned calls. By increasing the length of time for measurement, I think that the companies will have more room to abandon calls. Perhaps on one day they can abandon many calls, yet still meet the 3% requirement by abandoning fewer calls on other days. There will be more calls to average and thus more room to increase abandoned calls. The per-day standard limits the numbers of abandoned calls that consumers receive.
15. *Do small businesses and other sellers have alternatives that are equally or more effective than live telemarketing, such as postcard or email announcements, to notify their established customers of sale offers and to obtain orders? Would the costs of such alternatives be outweighed by benefits to consumers in avoiding additional abandoned calls to their homes?* I think both postcards and email announcements require much less effort to dispose of on my part, and the information can be consumed more quickly (I can read faster than the other person can speak aloud, plus I have the option of skimming). The costs of these alternatives will not be

outweighed by the benefits to consumers in avoiding abandoned calls. Most consumers loathe solicitation by phone, and intruding their privacy is of the utmost importance. Protecting a consumer's privacy in his home will always outweigh any costs. Furthermore, postcards and email announcements do not pose the health and safety risks that telephone calls do.