

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

Specific Issues for Comment – Section B

Question #1: Should the Commission include an explicit prohibition of prerecorded telemarketing calls in the TSR?

Answer to Question #1:

Yes, the Commission should include an explicit prohibition of prerecorded telemarketing calls in the TSR. It is clear from the consumer comments on the VMBC petition that there is an overwhelming desire to not allow telemarketing calls that are prerecorded, even if the party called has a preexisting relationship with the seller. If the TSR does not include an explicit prohibition of prerecording telemarketing calls, telemarketers will be able to invade our homes and our privacy more than ever because it will leave consumers without the power to be heard.

In addition to the information provided in the Federal Register, receiving prerecorded messages can also reduce one's productivity and interfere with important client matters. For example, this past summer I would receive prerecorded telemarketing sales calls at work. I would be in the middle of working on an issue for a client and the phone would ring and all I would hear was a prerecorded telemarketing message. It was frustrating because I did not have time to wait to get to the end of the message to put my work number on the Do Not Call Registry and everyday I would receive two to three prerecorded messages. This is a serious problem because it interrupted my work, and while the prerecorded message was going, I was unable to get phone calls from clients who were calling with more pressing matters.

Question #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?

Answer to Question #2:

Yes, the Commission is correct in its understanding that a reasonable consumer would consider prerecorded telemarketing sales and charitable solicitation calls to be coercive and abusive to one's right to privacy. It is frustrating to receive telemarketing calls from a real person, but receiving telemarketing calls from a prerecorded message is even more frustrating because it leaves a person without any chance to interrupt or ask questions. Furthermore, you can't explain to the prerecorded message that now is not a good time to call, but that you wouldn't mind if they called back at a later time, which would actually be beneficial to the industry because instead of losing a customer altogether, they could call back at a later time.

Question #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 telemarketing calls?

Answer to Question #3:

Yes, a consumer's choice not to list his or her telephone number on the Do Not Call Registry indicates that he or she is not willing to accept both live and prerecorded telemarketing calls. If I do not want to receive phone calls from a live person, then I certainly do not want to receive phone calls from an automated person in which I have no chance to interrupt, ask questions, or be heard. In fact, it is more frustrating to have to listen to an automated voice for the entire message to finally get the prompt for what to do to be added to the Do Not Call Registry than it is to interrupt a live person and ask them to place you on the Registry. It would be inefficient to have to make a person not only place themselves on the Do Not Call Registry for live telemarketing as well as a separate Do Not Call Registry for prerecorded telemarketing. Telemarketing is telemarketing, period. If you do not want live calls, you surely don't want prerecorded calls.

Question #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?

Answer to Question #5:

I think that there will be a significant impact on consumers' privacy interests of not applying the call abandonment safe harbor requirements to calls left on consumers' answering machines because consumers will have to listen to the entire message before being prompted on how to get their numbers on the Do Not Call Registry. This places the burden on the consumer to wait for the Do Not Call prompt, write a phone number down, and then make a phone call to have their name and number placed on the Registry. What ever happened to the notion that consumers come first? It is evident from consumer comment on the VMBC that they do not want prerecorded calls, and by not applying the safe harbor position, consumers' privacy interests are at stake.

Question #6: Are prerecorded messages left on answering machines less intrusive than prerecording messages answered by a person?

Answer to Question #6:

No, prerecorded messages left on answering machines are not less intrusive than prerecording messages answered by a person. At least if you answer a prerecorded message you have the option of hanging up, but if there is a prerecorded message on your answering machine you have to listen to it. Furthermore, it takes up space on your answering machine and it wastes a person's time because he or she has to listen to the message. Both of these effects come as a great cost to the consumer. The FTC's proposed amended rule only applies when a person answers the telephone. However, I urge that the rule be applied to answering machines as well because it is as intrusive and abusive when a prerecorded message is left on a person's answering machine.

Question #7: What are the costs and benefits to consumers, if any, of allowing companies to leave prerecorded messages, as opposed to live messages, on consumers' answering machines? Do consumers incur additional costs in terms of (a) paying for

storage of messages they do not want; (b) exceeding their allotted storage capacity; (c) being unable to receive messages they want or need; (d) being unable to use home telephone lines tied-up by prerecorded messages; or (e) retrieving messages? Do consumers receive additional benefits, such as lower marketing costs that are eventually passed on to them?

Answer to Question #7:

There are only costs to allowing companies to leave prerecorded messages, as opposed to live messages, on consumer's answering machines. Both are actually costly, but there is something more grinding and irritating when there is an automated voice on the answering machine versus a person's voice. Usually the prerecorded messages are longer than if a live person would leave a message. Since the messages are longer, it takes more time to listen to them and they take up more space on your answering machine. This creates risk that you won't receive messages that are important because your mailbox is full. I have an answering machine because I want people to be able to leave messages when I am not available. These messages should be important. A prerecorded telemarketing message trying to sell me a cheese grater is not so important and it puts me at risk of not receiving those messages that are important.

Question 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?

Answer to Question #9:

If a 30-day standard is adopted it should be limited to the duration of each campaign because averaging the campaigns within a period will lead to an increase in discriminatory abandonment. Thought it may seem utopian to rely on trade association members good faith, it is unlikely that they would not use discriminatory practices.