

## Comments regarding TSR Prerecorded Call Prohibition and Call Abandonment Standard Modification

Project No. R411001

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1. The effect on consumers from an explicit prohibition of prerecorded telemarketing calls, as proposed by the FTC may be significant. Two elements of the proposal are of particular concern. Firstly, the prohibition only applies to outbound prerecorded calls “when answered by a person”. This creates a monstrous loophole through which industry can continue to penetrate the serenity of the home by leaving unwanted and perhaps protracted messages on a consumer’s answering machine or voice mail service. The FTC characterizes this scenario “as less disruptive if it [the prerecorded call] arrives when the party called is not home than if it arrives when he or she is at home in the midst of daily activities.” I disagree. It is just as annoying and inconvenient, if not more so, to find one’s answering machine or voice mail box jammed full of unwanted commercial solicitations than it is to be subjected to such recordings in person. At least when one is there to pick up the phone and receive such calls in person he or she can hang-up and end the intrusion almost immediately. Depending on the answering service the consumer has, he or she may have to listen to the message in its entirety. The consumer also must go through the added hassle of not only listening to all or part of the solicitation, but also must delete the message. Furthermore, it is a distinct possibility that one or more of these messages may take up the entire recording space available on a consumer’s answering machine or similar service, thus potentially resulting in the consumer missing messages from other sources, which the consumer may have an actual interest in hearing and that are likely more important to the consumer. For all of these reasons, the caveat “when answered by a person” should be removed from the new subsection.

Of further concern is the stipulation that such prerecorded messages are permissible if the “seller has obtained the express agreement, in writing, of such person to place prerecorded calls to that person.” The potential for abuse of this exception is real and substantial. It is possible that industry will use this proviso to force consumers purchasing their good or service to sign what in essence will amount to a contract of adhesion, requiring the consumer consent to receiving such calls in order for him or her to purchase the product or service. While such contracts would obviously be legally invalid, many consumers do not have the legal sophistication or the inclination to challenge such arrangements and are likely, as many of us do, to simply sign whatever document is put in front of us unperturbed by the offensive contents contained in the fine print. The FTC should consider a more detailed regulation regarding how such an express agreement be presented and explained to consumers so that they may be fully informed as to what they are signing. The FTC should also expressly state that no consumer be

required to sign such an express agreement consenting to receive prerecorded calls as a condition to receiving the product or service that they wish to purchase.

2.

I have no comment regarding the proposed change in the measurement of the maximum allowable abandonment rate under the existing safe harbor in 16 CFR 310.4(b)(4)(i). I am unpersuaded that the proposed measurement is any less arbitrary or any more effective in achieving the goals of the FTC and Congress than the previous test.