

General Questions:

a) is always about prohibition of prerecorded calls and b) is always about the measurement of the rate of abandoned phone calls over 30 days per campaign instead of over every single day

1.) What is the effect on consumers?

a) Prohibition of prerecorded calls means that consumer's privacy is not invaded by receiving prerecorded phone calls in which the consumer is not able to talk to a live sales person or customer service representative to make himself heard or to ask to be put on the company do-not-call list.

b) Measuring the 3% abandoned call percentage over 30 days per campaign instead of over one day per campaign still does not allow telemarketers to treat different campaigns differently. If telemarketers would be allowed to treat different campaigns differently, they might target one campaign at low-income people with a higher rate of abandoned calls and another campaign at high-income people with a lower rate of abandoned calls (who are therefore able to talk to a live sales person to a larger extent and will more likely spend money). Telemarketers therefore cannot discriminate in this way under this rule.

2.) What is the impact on individual firms that have to comply with the rule?

a) The prohibition of prerecorded calls prevents telemarketer from using cheaper prerecorded calls to get their sale pitch out. A prerecorded call needs to be recorded only once and can be played back automatically for each customer, leading to large savings. Therefore, individual telemarketing firms will have to pay more for live sales people.

b) The proposed amended rule makes it easier for the firm to satisfy the rule limiting abandoned calls to 3% of the total calls. Longer periods of time for the measurement mean that the predictive dialer's estimates of how many people pick up are more accurate and that the actually observed answer rate and abandonment rate is closer to the estimates. Else, if the abandonment rate is measured over only one day, the telemarketing firm could be forced to call less people if too many calls are abandoned earlier in the day and would have to change its calling strategy or settings of its software.

3.) What is the impact on industry (including industry that does not have to comply with the rule)?

a) The prohibition forces the telemarketing industry to use more expensive live sales people instead of prerecorded messages for sales pitches. Industries that rely on telemarketing will have to pay a higher price for telemarketing than without the prohibition.

b) The change in the measurement approach affects the industry by affecting the individual firms: giving firms more time to average means that statistical measurements are closer to the estimates. Telemarketing companies therefore do not have to change their calling strategy during the day and can therefore operate cheaper.

4. and 5.) One way to make the telemarketing companies more efficient and thereby decrease the costs for the telemarketing companies and therefore for the industries that use their services is to increase the number of people that the telemarketers can

call. This could be achieved for instance by the weakening of the “previous business relationship” conditions, such as allowing longer periods (purchase or inquiry within the last 24 months instead of 18 months) or allow a subsidiary or a parent company of a company to call if the consumer had a previous business relationship with that company. This would provide the telemarketing industry and any single telemarketing firm with more people to call and make them therefore more efficient (and therefore decrease their costs); on the other hand it would lead to more calls to consumers and therefore more invasion of consumers’ privacy.

6.) How would it affect smaller business entities?

a) Smaller firms have fewer live sales people and therefore restricting prerecorded messages makes it harder for them to compete with larger firms who have more sales people. Profits of such small businesses would decrease, and they would be less competitive. This means that the small firm is likely to employ less people (since it does not make enough money to hire more) than without the prohibition, on the other hand since they need to hire live sales people to provide their services, it might have to hire more people than without the prohibition.

b) Smaller telemarketing firms use shorter lists, and therefore statistical measurements can deviate to a larger extent from the estimates. While longer periods (30 days in the amended rule) make it more likely that the same calling strategy can be used over the entire period, the smaller size of the smaller companies, and the smaller number of customers allows for larger statistical outliers, meaning that the 3% rule might be triggered faster for smaller companies.

7.) Such statistics do not seem to be available. That no small firm responded to the last notice could indicate that there are none or only few, but it could also mean that small firms are less likely to respond to such notices because they expect less from regulation, or they do not expect to have a say.

Specific Questions:

1. An explicit prohibition makes the regulation very clear to the telemarketers and they have to spend less effort to understand it and litigate it out, and the regulation does codify the current policy. Also, it prevents consumers from being harassed or coerced by such calls, which seems to be very important to them, judged from their comments.
2. Prerecorded telemarketing calls and solicitations for charitable contributions are considered coercive and abusive by reasonable consumers as shown in the comment to the amended rule.
3. A consumer’s choice not to list his phone number on the Do Not Call Registry could indicate that the consumer enjoys live telemarketing calls, and since the customer might enjoy buying from telemarketers he or she might also enjoy (or find useful) the prerecorded calls advising him or her of the telemarketers’ offers. On the other hand, it might mean that the live telemarketing calls do not bother the consumer enough to sign up on the do-not-call list, but that the prerecorded telemarketing calls are so much more offensive or coercive to the consumer that he or she would not accept prerecorded calls.

4. The rule possibly should mandate specific disclosures on the form or regulate the way how the consumer expressly gives written consent so that consumers are not tricked by forms which claim to give him some benefit, but in fact in small print say that this constitutes customer's consent to be called.
5. Abandoned calls might be less intrusive and less damaging to consumer's privacy interests if they go to answering machines than if they happen to the consumer picking up the phone. However, the message might still record the dead air and other annoyances that consumers complain about when they pick up the phone on an abandoned call.
6. Consumers' privacy interests are not impacted as much as they would be when consumers are interrupted or harassed by telemarketers' phone calls since an answering machine is receiving the message and therefore the consumer is not impacted at that moment. However, at the time the consumer listens to the answering machine, his privacy interests will be impacted. Prerecorded sales pitches on the answering machine might be considered as annoying as if received directly on the phone; and they will interfere with the consumer's use of the answering machine. The consumer also could have an expectation (of privacy) that only friends or companies reacting to the consumer's questions or orders leave messages on the answering machine; allowing pre-recorded sales pitches on the answering machine would violate that expectation.
7. The benefits are that the consumer would get the prerecorded message and if he or she would be interested in buying or would consider it a good deal, it would be useful information to him or her. However, in some circumstances the consumer would have to pay for the storing such messages which (s)he did not want to receive; such messages might overflow his/her message mailbox, and in this way make it impossible to receive messages that (s)he actually wants to receive; the leaving on such messages on answering machines might interfere with the consumers' use of the phone; and consumers might have a harder time or spend more time (and more money for the connection) listening to their answering machine with several prerecorded messages. The lower marketing costs of the firms selling these products might or might not be passed onto the consumers, and the consumer might not be interested in buying such products to begin with.
8. Companies can abandon more calls if abandoned phone calls to answering machine do not count. This allows a slightly higher rate of calls and a slightly more efficient use of live sales people.
9. It should not cover all campaigns because this would allow discriminatory treatment of campaigns, and it should cover only a single campaign because of the same reason. As soon as it is restricted a single campaign, counting it over 30 days or over the duration of the campaign if shorter will not make a difference.
10. I am not aware of any such significant efficiency which would not be based on discrimination between the campaigns.
11. Different campaigns are run by different sales people. To measure abandonment rates separately instead of over all campaigns requires only a slightly different processing of the abandonment data for each sales person, therefore there should be no technological problems.

12. Such upgrades seem to be easy to implement and therefore they should be available.
13. Allowing smaller companies with fewer customers to measure abandonment rates over longer periods of time would mean that even for these smaller companies the estimates produced by the predictive dialers are more exact and therefore the same sales strategy can be used and does not have to adapt to unexpected high rates of abandonment which could occur because of the small sample size. However, the economies of size would still mean that such smaller companies are less efficient and economical.
14. Measured over short time periods, customers might receive a larger number of abandoned calls on some days and a smaller number on other days if the measurement is taken over 30 days, but the average number of abandoned calls would stabilize. Taking the measurements over each day would force changes in calling strategy after a certain number of abandoned calls has been reached, making it sure that the limit is not reached. Enforcing the limit over daily numbers of abandoned calls would lead to a smaller number of abandoned calls totally.
15. Small business might have other alternatives such as postcards, email, websites, or blogs to reach their customers. Providing an easy login for websites would allow the company to tailor such alternatives to their customers and to present different offers to different kinds of (recurrent) customers. Customers might care enough or be upset enough about abandoned calls to make such alternative solutions viable and effective.