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Federal Trade Commission
Office of the Secretary
Room H-135 (Annex K)
600 Pennsylvania Avenue, NW
Washington, DC 20580

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

I. Background

These comments are submitted on behalf of the National Newspaper Association (NNA) to provide comment on the Federal Trade Commission's proposed amendments to its Telemarketing Sales Rule, 16 CFR Part 310. The primary purpose of these comments is to request that the Commission:

- clearly enable newspapers to advise customers of the cancellation dates of their orders;
- permit newspapers to presume consent of customers whose established business relationships were confirmed prior to Jan. 2, 2007; and
- find oral consent sufficient in the established business relationship for purposes of permitting recorded messages.

Finally, NNA hopes the Commission will once again consider a small business exception to this rule. The impact of the Commission's rules under TSR has had and continues to have a severely debilitating affect upon the nation's community newspapers, which have experienced such heightened cost of sales because of Do Not Call rules that the service of small newspapers to their communities is in jeopardy.

Who we are

Established in 1885, the National Newspaper Association is the national voice of community newspapers. NNA represents owners, publishers, and editors of America's community newspapers and with over 2,500 newspaper members, is currently the largest newspaper association in the United States. NNA's membership generally comprises family owned and operated newspapers, predominantly weeklies with circulations under 5,000 or dailies with circulations under 10,000.

What we do

The mission of NNA is to protect, promote and enhance America's community newspapers. The community newspaper touches its customers directly through content and personal connections. As a result, people become dependent on their local paper for community news that could not be obtained elsewhere. Even in the Internet age, substitutes for the community newspaper have not yet developed to any appreciable degree. Therefore, the local paper often is the sole source of news on local schools, youth sports, city and county governments and local religious and service activities.

Why we are commenting

NNA has not commented before on these proposed amendments. However, there has been a recent increase in the importance of using recorded messages in the newspaper community to communicate with customers. NNA believes the interest is driven in part by reductions in the price of sophisticated services that a decade ago would have been out of the reach of most small, family-owned newspapers. The challenges of maintaining a readership base with declines in youth readership also have driven newspapers to work harder at maintaining a sound relationship with readers and advertising customers in order to retain the viable customer base that covers its fixed costs.

NNA does not comment at this time on the proposal to modify the method for measuring the call abandonment rate in the TSR safe harbor provision.

II. Importance of the Technology

How newspapers use the technology

Newspapers use voice services in limited ways, primarily at the local level. For example, newspapers may use voice messaging to:

- Alert readers that inclement weather has affected delivery and advise on how a newspaper may be obtained (such as at a newsrack or retail locations);
- Remind repeat subscribers of due dates for their renewals and provide a contact point to reinitiate the subscription;
- Advise customers that classified ads placed by them are expiring and provide a contact point to renew the ad;
- Survey subscribers to ensure quality control and customer satisfaction;
- Verify new subscriptions obtained from independent agents and contractors and from newspaper staff involved in sales activities outside the publishing facilities, such as kiosks at county fairs, school drives and charitable joint marketing campaigns.

Although most of the uses are purely informational and are not subject to these regulations, NNA believes some desirable uses of voice recordings that might contain sufficient information to permit the customer to initiate a transaction should be permitted without violating the intent of the regulations.

The benefit to the newspaper

It is extremely expensive, both in terms of time and money, to maintain fully-staffed human call centers. With the severely restricted candidate lists as a result of the Do Not Call rules, newspapers struggle to create sufficient work for call centers to cover basic overhead costs. Thus, the voice messaging options have become more popular while newspapers repurpose their marketing outreach to permissible marketing activities, such as the time-intensive event-related marketing strategies. The voice messaging apparatus has a side-benefit for readers—the revenue driven by them also can pay for heightened, customer service and quality control. It also provides newsroom resources for the coverage of news in the community by allowing newsrooms to take quick automated surveys or canvas a community for subjects that fit a certain news theme being pursued by a reporter.

Further, the ability to explain to customers the reason why the paper will not be delivered at the usual time preempts questions by the consumer and frees up valuable resources that would otherwise be required to answer individual calls from customers.

The benefit to the consumer/subscriber

The costs to the subscriber are significantly reduced because the newspaper can pass along its savings in the form of lower subscription rates. Lower rates permit more community members to have the means to afford the newspaper which in turn leads to increased community involvement and awareness. The negative impact upon readership because of the TSR's various rules, while seemingly justified as newspaper businesses are treated uniformly with other marketing businesses, has had an unfortunate social consequence in communities. A community with low newspaper readership is a community that is ill-informed on the civic issues in its area. Conversely, public policy that encourages affordable newspapers also encourages informed communities.

The ability to provide a standard and coherent message through automated means is also of immeasurable value to the consumer. A prerecorded message in local dialects that is uniform for every contact helps a business to provide clear, concise and effective messages to communicate to the subscriber. Human error causes some messages to be misinterpreted or unintentionally altered.

Newspaper managers, like other businesses, are required to keep company-specific Do Not Call lists. The experience in the newspaper industry is that these lists are typically small and in some cases nonexistent. Newspaper subscribers have been less likely to resist calls of any sort from the local paper, and managers believe they do not consider prerecorded calls from their community newspaper to be coercive or abusive of their right to privacy. An informal canvassing of NNA members, did not find one single complaint to a newspaper by consumers who received a prerecorded message. In fact, some reported that subscribers had thanked the paper for friendly reminders that their newspaper subscription was about to expire.

III. Effect of Proposed Amendments

Requirement of express written agreement is overly burdensome

Express consent is burdensome and costly for all businesses. For a small business, it creates costs beyond the harvesting of the consents, including the set up and maintenance of databases. Most of NNA's members have a limited staff that is already burdened with multiple responsibilities. The responsibility for contacting subscribers that may have had a 20-50 year tenure with the paper would be extraordinarily disruptive. The time and resources required to devote to contacting each individual subscriber would require a newspaper to hire staff and buy or rent additional equipment at an additional expense.

Further, it is likely that subscribers will find being contacted by the paper to give written consent and provide specific contact information for solicitation purposes will be more burdensome than a voicemail reminder of an expired subscription.

Provide no other alternatives that are equally effective or economical

Prerecorded messages are often the only option for the newspaper to contact the consumer. No alternative is as economical, efficient or non-intrusive as the voice message, which commonly is received by the consumer in a voice mail.

Customer service will suffer severely as a consequence

The customer service benefit that recorded messages provide will significantly suffer; if it is even financially possible to maintain. An informal canvassing of NNA members confirms that newspapers who currently use prerecorded messages will continue to use the service to maintain customer relations. However, it is not yet known if broadcasting services will be able to continue to offer their services if their business is significantly reduced. Further, it is unclear whether or not it will remain economically feasible for newspapers to continue to provide this service if the opportunity to invite customers to contact them for transactions is eliminated. Without some line of use that drives revenue to the business, the recorded message system becomes a pure cost that goes directly to the bottom line, and likely will be unaffordable for marginally profitable community newspapers.

IV. NNA's Proposals to the FTC

In light of the above evidence, NNA requests that the FTC consider incorporating the following proposals into the proposed amendments:

Permit informational messages that may include some minor element of a commercial invitation between the newspaper and their subscriber

A simple reminder of the expiration of an ongoing contractual agreement without any explicit solicitation does not create the problems the FTC envisions and protects the local community relationship between a consumer and their community newspaper. Newspapers should be permitted to contact subscribers to inform them of expiration dates, or classified ad purchases to inform them of the end of their insertion period and to provide sufficient information to permit the consumer to take action. No solicitation need be involved and the decision to take further action would be clearly left to the consumer. The burden upon the relationship would be incidental, but the benefit to both customer and newspaper would be substantial.

Grandfather in existing customers

NNA urges the FTC to recognize the strength of the existing relationship community newspapers have with their customers and permit subscription renewal calls to existing subscribers. Because most newspapers in this country were established before 1900, most have long standing relationships with many readers that exceed 20, 30 and even 50 years. The burden of contacting a large database to obtain written consent would far outweigh any benefit specific express consent may provide.

Recognize oral consent as valid confirmation that a business relationship has been established

It is further reasonable for the FTC to accept oral consent for any new subscriptions that are completed after January 2, 2007. This requirement would be attainable with little burden on the newspaper or the new subscriber. In the event of a dispute, the burden would fall on the newspaper to affirmatively prove that consent was granted.

Recognize an exemption for small businesses

The Commission has resisted recognition of the unique impact of its rules upon small businesses. However, in the newspaper industry, the impact of the TSR rules has been deep and alarming. There was a time in the nation's history when newspapers were designed to serve elite markets. However, since the middle of the 19th Century, newspapers have been considered a medium for the masses and designed to be affordable and accessible in order to convey information to the widest audiences. But in the age of bombardment by advertising of all types, media seeking a reader's attention have an ever escalating cost of sales. Recruiting new subscribers has only just become a challenging problem for small newspapers because of the Do Not Call rules; disabling the ability to efficiently contact existing customers would simply pile on the harm.

While all newspapers are similarly affected, it is the smallest of the papers in the smallest of communities that are least able to sustain the new costs. The Commission has the ability to craft rules that recognize small businesses under the SBA rules and it should do so.

In summary, NNA requests that the Commission will consider the relationship between a newspaper and their customers and permit: 1) advisement of cancellation dates on orders, 2) a presumption of consent with customers engaged in an existing business relationship before Jan. 2, 2007, 3) oral consent for new subscriptions, and 4) an exception for small businesses.

Respectfully submitted,

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