

**Before the  
FEDERAL TRADE COMMISSION  
Washington, D.C. 20580**

**In the Matter of** :

**Proposed Amendments to the** : **RIN: 3084-0098**  
**Telemarketing Sales Rule: TSR** :  
**Prerecorded Call Prohibition and Call** :  
**Abandonment Standard Modification,** :  
**Project No. R411001** :

**COMMENTS OF THE ATTORNEY GENERAL OF CONNECTICUT**

**December 18, 2006**

## **I. INTRODUCTION AND SUMMARY**

As Attorney General of the State of Connecticut, I am pleased to submit these comments in connection with the review by the Federal Trade Commission (the "Commission") of rules proposed pursuant to 15 U.S.C. §§ 6101-6108, which amend the Telemarketing Sales Rule ("TSR")<sup>1</sup> by adding new paragraph (b)(1)(v), and revising paragraph (b)(4)(i). The Commission requested comments pursuant to a Notice of Proposed Rule Making ("NPRM") published on October 4, 2006.<sup>2</sup>

I urge the Commission to amend 16 CFR § 310.4(b)(1) of the TSR to prohibit unsolicited prerecorded telemarketing calls regardless of whether these calls are answered by a person, an answering machine or voicemail system, unless a consumer has given prior written consent to receive such calls. I also oppose the proposal to modify the method for measuring the maximum allowable call abandonment rate. However, should the Commission decide to modify the method for measuring the maximum allowable call abandonment rate, I strongly suggest that the rate be measured over the course of *each* campaign.

## **II. DISCUSSION**

### **A. UNSOLICITED PRERECORDED TELEMARKETING CALLS**

The Commission has proposed adding a new subsection to the "Pattern of Calls" prohibitions in 16 CFR § 310.4(b)(1) of the TSR. Section 310.4(b)(1) will continue to read, "It is an abusive telemarketing act or practice and a violation of this rule for a telemarketer to engage in, or for a seller to cause a telemarketer to engage in, the following conduct:" The new subsection would add:

"(v) Initiating any outbound telemarketing call that delivers a prerecorded message when answered by a person, unless the seller has obtained the express agreement, in writing, of such person to place prerecorded calls to that person. Such agreement shall clearly evidence such person's authorization that calls made by or on behalf of a specific party may be placed to that person, and shall include the telephone number to which the calls may be placed and the signature of that person; provided, however, that prerecorded messages permitted for compliance with the call abandonment safe harbor in § 310.4(b)(4)(iii) do not require such an agreement."

The proposed amendment expressly prohibits telemarketers from making a prerecorded call to a consumer unless that consumer has given his or her prior written consent to receive such calls.

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<sup>1</sup> 16 C.F.R. § 310.4

<sup>2</sup> 71 FR 58716 (October 4, 2006)

While I support requiring telemarketers to obtain consumers' written consent before leaving prerecorded messages, the proposed amendment does not go far enough since it only prohibits prerecorded messages "answered by a person." Consumers have made loud and clear their disdain for prerecorded telemarketing messages.<sup>3</sup> These calls invade a person's home and privacy, whether a consumer or his or her answering machine receives them. These prerecorded messages fill up answering machine and voicemail space, may cost consumers money to retrieve (via cellular phone or long-distance charges) and can prevent use of the line in an emergency.<sup>4</sup> Therefore, I urge the Commission to adopt a total ban on prerecorded telemarketing messages.

## **B. MAXIMUM ALLOWABLE CALL ABANDONMENT RATE**

The Commission has further proposed amending the definition of "maximum allowable call abandonment rate" in the TSR's existing safe harbor provision.<sup>5</sup> The call abandonment provision was adopted to prevent the abusive practice of "dead air" calls and "hang-ups."<sup>6</sup> "Dead air calls" or "hang-ups" occur when a telemarketing company calls a consumer using a pre-programmed dialer, the consumer picks up, and the telemarketing company subsequently hangs up or delays in responding to the consumer because no telemarketers are available. The current rule<sup>7</sup> limits abandoned calls to three (3) percent of calls and measures the rate on a "per day-per campaign" basis. The proposed amendment measures the three (3) percent call abandonment rate "over the duration of a single calling campaign, if less than 30 days, or separately over each successive 30-day period or portion thereof that the campaign continues."

The telemarketing industry's comments acknowledge that it can configure dialers to comply with current standards.<sup>8</sup> Since these calls represent a substantial intrusion into consumers' lives, I oppose this proposal to weaken consumer protections and urge the Commission to refrain from amending the definition of allowable call abandonment rate.

Some members of the telemarketing industry have called on the Commission to amend 16 C.F.R. § 310.4(b)(4)(i) to measure the three (3) percent abandonment rate by averaging any and all of their telemarketing campaigns. Should the Commission decide to amend the method and time period for measuring the maximum allowable call abandonment rate, I urge the committee to reject this "blended" approach and recommend that the rate be measured during *each* calling campaign to reduce potential discriminatory treatment of disfavored groups. Scores of consumers and consumer advocacy groups filed comments opposing changing the call abandonment standard to a thirty-day (30) average across all telemarketing campaigns.<sup>9</sup> A thirty-day (30) standard, including any and all campaigns, would make less valued consumers the target of a disproportionate share of abandoned calls.

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<sup>3</sup> 71 FR at 58720

<sup>4</sup> 71 FR at 58721

<sup>5</sup> See 16 C.F.R. § 310.4(b)(4)(i)

<sup>6</sup> 71 FR at 58729

<sup>7</sup> 16 CFR § 310.4(b)(4)

<sup>8</sup> 71 FR at 58729

<sup>9</sup> 71 FR at 58728

The telemarketing industry has an obvious financial incentive to engage in this practice. Without the recommended safeguard, consumers can only rely on the good faith of the industry that it will not engage in such practices, which directly conflicts with its financial incentive to do otherwise.

### **III. CONCLUSION**

I have long viewed call abandonment and unsolicited prerecorded telemarketing calls as a serious concern affecting countless individuals and businesses. Such communications are an invasion of privacy. They impose unfair costs on consumers and may prevent access to a line in an emergency. I urge the Commission to consider these recommendations and to take this opportunity to enhance its rules to add protections for our citizens. In so doing, the Commission will promote our mutual consumer protection goals.

Respectfully submitted,

Richard Blumenthal  
Attorney General of Connecticut