



Before the Federal Trade Commission

In the matter of)	
)	
Telemarketing Sales Rule)	
)	
Prerecorded Call Prohibition and)	FTC File No. R411001
Call Abandonment Standard Modification)	
)	December 18, 2006

**Submitted on behalf of AARP
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AARP appreciates this opportunity to comment on the Federal Trade Commission's (FTC) Notice of Proposed Rulemaking regarding amendments to the Telemarketing Sales Rule (TRS).¹ We applaud the FTC's effort to date to protect the interests of consumers, particularly mid-life and older Americans, by adopting strong rules to enact the Telephone Consumer Protection Act² and the Telemarketing and Consumer Fraud and Abuse Prevention Act.³ The FTC now has another opportunity to address consumers' interest in limiting telemarketing calls by implementing rules to further restrict the number of calls sellers can initiate. The FTC should declare that the TSR explicitly prohibits prerecorded messages to consumers and should deny the Direct Marketing Association's (DMA) petition to change the standard measurement for abandoned calls.

AARP's interest in the Telemarketing Sales Rule and concerns about telemarketing abuses are long-standing. In 1995, AARP was an active participant in the original TSR rulemaking proceeding and subsequently worked with the FTC to establish the Do-Not-Call (DNC) Registry. AARP has also dedicated significant resources to educating consumers about telemarketing fraud and to working with federal, state and local law enforcement agencies and policymakers to combat this important consumer problem. The existing TSR has helped support these efforts. The current NPRM provides an opportunity for the FTC to strengthen the TSR.

¹ 16 CFR Part 310

² 47 U.S.C. 227 et seq.

³ 15 U.S.C. 6101 et seq.

The FTC's NPRM proposes two changes to the TSR of interest to AARP: 1) prohibiting prerecorded telemarketing messages in calls to established customers unless the seller receives express prior written consent from the consumer, and 2) changing the current call abandonment measure from three (3) percent of all calls "per day, per campaign" to three (3) percent of all calls over the duration of a single calling campaign if less than 30 days, or separately over each successive 30-day period or portion of time during the campaign period.

In order to strengthen the TSR and provide the level of protection consumers require and deserve, AARP urges the FTC to make it explicit that the TSR prohibits prerecorded telemarketing calls to consumers, including those with an established business relationship with the seller. We also urge the FTC to retain the current call abandonment measure of 3% per day per campaign.

Background:

AARP commends the FTC's implementation of the DNC Registry. It has been an unprecedented success as a pro-consumer, government program. Consumer response to the opportunity to reduce telemarketing calls has exceeded all expectations. Since the inception of the DNC Registry, over 107 million consumers' telephone numbers have been registered with the DNC Registry.⁴

⁴ <http://www.ftc.gov/os/2006/07/P034305FiscalYear2005NationalDoNotCallRegistryReport.pdf>

A January 2005 report of the Government Accountability Office (GAO), “Telemarketing: Implementation of the National Do-Not-Call Registry,” reveals that consumers are overwhelmingly positive about the DNC Registry. The GAO commissioned two surveys to determine the overall performance of the DNC Registry and concluded:

“Notwithstanding limitations of these surveys, the FTC considers the surveys’ results to have found that most people know about the national registry and most people who say they have a telephone number on the national registry say they are getting fewer calls...”

There is no question that consumers view the DNC Registry as a most effective mechanism to reduce unwanted telemarketing calls.

Notwithstanding the success of the DNC Registry, consumers still contend they receive too many telemarketing calls. In a 2005 study conducted by AARP, 62 % of respondents with telephone numbers *registered with the DNC* list indicated that the current number of telemarketing calls they receive is more than they would like. The FTC should institute additional rules to lessen the burden of telemarketing calls received by consumers.

Prerecorded Telemarketing Calls:

In the Notice, the FTC proposes to prohibit all unsolicited prerecorded telemarketing calls, including those from sellers to established business customers. AARP strongly supports this proposed measure to eliminate these unwanted calls. As the FTC itself has recognized in the text of the NPRM, consumers don’t want these calls. “This record

demonstrates that the overwhelming majority of consumers consider prerecorded telemarketing calls a particularly ‘coercive or abusive’ infringement on their right to privacy.”⁵

AARP believes that the prohibition on prerecorded telemarketing calls should apply to all consumers, regardless of whether there is an established business relationship, whether the company receives a prior written consent, and regardless of whether the calls are received by a person, an answering machine, or a voice mail system. An absolute prohibition on prerecorded telemarketing calls is the best course for consumers for the following reasons:

- 1) **Consumers don’t want more telemarketing calls; permitting prerecorded calls with prior written consent will increase the volume of telemarketing calls.** AARP’s 2005 study of consumers with telephone numbers on the DNC Registry revealed that only 2% responded that the number of telemarketing calls they get are “less than I would like,” while 62% indicated the number of calls they receive are more than they want.
- 2) **The burden will be on consumers to reverse course and “opt-out” of receiving these calls.** Although a consumer may initially determine these calls could be of interest, if a consumer subsequently decides to change their “opt-in” with the seller it will be confusing, and possibly difficult, for consumers to retract their consent. Without a live person to speak with, consumers will need to initiate

⁵ Federal Register, Vol. 71, No. 192, October 4, 2006, pg. 58726

an additional, burdensome action to “opt-out” of future prerecorded telemarketing calls, particularly if the prerecorded message call is left on an answering machine or voice mail system.

- 3) **It will be difficult for consumers to distinguish prerecorded calls from sellers they have given consent to from other telemarketing calls.** With an increase in the number of calls received, consumers will need to quickly recognize calls from sellers that have received their prior consent from sellers that do not. The option for consumers to “just hang-up” on prerecorded telemarketing calls will be a more difficult option for consumers to use.

- 4) **Prerecorded calls received by an answering machine or voice mail system may result in filling the message capacity and therefore prevent consumers from receiving other, more urgent calls.** For older Americans, this is of particular concern, given the importance of communications with health providers and loved ones.

- 5) **The consumer benefits resulting from prerecorded telemarketing calls are negligible and far outweigh the cost to consumers’ privacy in their own homes.** In a 2005 AARP survey, consumers registered for the DNC list were asked to respond to the question, “Overall, which phrase best describes telemarketing?” While 84% said it was either “irritating” (62%) or “invades my privacy” (32%), less than 1% of the respondents (0.4%) responded that

telemarketing is a “great way to hear about new products and services.” When asked to describe the types of telemarketing calls they find most bothersome, calls from “salespeople” was number one with 75% of respondents indicating these calls are “very bothersome” and an additional 10% stating they are “somewhat bothersome.”

Given these concerns, AARP concludes it is necessary for the FTC to make it explicit that the TSR prohibits prerecorded telemarketing calls. If the FTC determines the record supports permitting sellers to solicit consumers’ written consent to receive prerecorded telemarketing calls, the following initiatives must be adopted: 1) the FTC should propose specific rules to ensure the clarity and simplicity of a seller’s invitation to consumers to submit written consent to “opt-in” and 2) Such proposed rules should be released to the public for comment.

Call Abandonment Measure:

AARP is concerned with any change to the TSR rule that could potentially increase the number of calls abandoned by telemarketers, or create the opportunity to target certain consumer groups for higher call abandonment rates. Changing the measure for abandoned calls clearly provides the opportunity for telemarketers to “game” the system and alter call abandonment rates over the course of each calling campaign.

Consumer problems with abandoned telemarketing call are caused, in large part, by telemarketers' use of predictive dialing. Predictive dialers automatically dial consumers' telephone numbers in the hope that a consumer will answer and that a telemarketing representative will be available to speak with the consumer. The predictive dialers call several numbers simultaneously, allowing the seller to respond to the first call that is answered; any other calls answered are "abandoned." Unfortunately, in far too many cases, the consumer rushes to pick up the phone only to hear dead air, or a click as the phone call is terminated with these "abandoned" calls.

For mid-life and older Americans, these calls are more than just a nuisance. In addition to the inconvenience and risk associated with rushing to answer the telephone, there is the uncertainty and concern from the consumer, especially for women living alone. When no one is on the other end of the line, or a consumer hears a "click" when answering the telephone, a number of different scenarios begin to play out in the mind of the consumer. Is the caller attempting to know if the consumer is home alone or away from the home? Was this an important call that the consumer just missed answering? The use of predictive dialers has been recognized by the Commission to be a nuisance to consumers, and has thus greatly limited their use by providing a "safe harbor" measure for call abandonment.

The industry's reasoning for liberalizing the call abandonment measure in this Notice includes the argument that consumers can address their concerns by using Caller ID to identify the names of telemarketers abandoning calls to their telephone number. This

suggested solution incorrectly places the burden and expense on the consumer to remedy this practice. For example, consumers who cannot afford the extra cost of a Caller ID service or telephone with a caller identification feature will be unable to check on the identity of an incoming call.

Previous AARP comments have recommended that abandoned calls include some identifying information; calls using predictive dialers should provide a taped message in lieu of hanging up. This would at least remove some of the uncertainty that currently exists when older persons answer abandoned calls.

Conclusion:

AARP appreciates the opportunity to provide our views on the proposed rules. We look forward to working with the FTC to strengthen the TSR and protect the interests of consumers.