

## **COMMENTS BY MESSAGEBROADCAST.COM REGARDING FTC PROPOSED BAN ON PRERECORDED MESSAGES ANSWERED BY LIVE PERSONS**

Regarding TSR Prerecorded Call Prohibition and Call Abandonment Standard Modification, Project Number R411001. Comments are due December 18. The text of the proposal can be found at <http://www.ftc.gov/os/2006/10/R411001telemarketingruleFRN.pdf>.

Filed Electronically at: <http://secure.commentworks.com/ftc-tsr> on December 18, 2006.

### **I. BACKGROUND OF MESSAGEBROADCAST.COM**

**MessageBroadcast.com** (“MB”) is a nationally recognized pioneer and policy-maker in the emerging Voice Broadcasting Industry. Our company delivers millions of voice messages a month on behalf of the nation's leading companies in almost every industry.

Marketers use MB strategies to deliver targeted personal messages on answering machines. We have helped hundreds of clients improve their marketing efforts by utilizing our new Person-to-Person media. Our client portfolio includes customers from the financial, technology, e.Commerce, hospitality, ISP/Portal, entertainment, politics/fundraising, publishing and retail industries.

MB provides its clients services compliant with applicable federal and state law including the TSR and has honored the national do-not-call list and general protections of consumer privacy since its inception.

This medium is a valuable way for our clients to communicate with their customers. Consumers have welcomed this contact. MB is filing these comments to let the FTC know of the value of the medium, request clarification regarding the certain aspects of the proposal, and respond to the general and specific questions raised in the proposal.

### **II. MESSAGEBROADCAST.COM'S USE OF PRERECORDED MESSAGES IN THE PAST**

#### **A. Description of Specific Uses**

MB has conducted literally thousands of campaigns for its clients calling their own customers with important information. Overwhelmingly, consumers have responded positively to these calls. Every single call has provided consumers a means to opt out of future calls from that client, and .3759% of consumer opted out. In contrast, positive response rates have ranged from 6% to 30%. Here are some specific examples.

## 1. Programs for One of the Nations Largest Banks

This client used our services in two ways: database marketing and credit card activation to its consumers. The client's scripts are as follows:

### **Script for Live Message with Opt Out:**

Hi this is a recorded message from [Bank] at 1-800-#. We noticed that you've activated your check card but have not begun enjoying the great benefits of using it for your everyday purchases. Remember, you can use your check card instead of cash or checks to buy gas, groceries, lunch, just about anything! So start paying the fast, easy way. Just swipe, sign, and go! To no longer receive marketing messages from [Bank], please press 1. Thank you and don't forget to begin using your [Bank] Check Card today!

### **Results:**

A positive response rate of over 16% tripled expectations for an industry average of 5%.

## 2. Calls by a Regional Financial Company for Mortgage Products

This client used the following script to market mortgage products to their existing customers:

### **Script for Live Message with Opt Out:**

Hi, this is a recorded message from [Mortgage Company] calling to let you know that you may qualify to refinance your current home loan and get cash fast from available home equity. Use this cash to consolidate your debt, make home improvements or to pay for unexpected expenses. Give us a call at 1-800-# for your refinance analysis and to see if you can access cash while locking in a low fixed rate. To no longer receive these offers via telephone, please press 1. Thanks! Hope to hear from you soon!

### **Results:**

An average of 50% was saved over other media used for this purpose in the past.

## 3. Calls for Nationwide Retail Client

Client used the following script to let customers know about an upcoming sale event:

### **Script for Live Message with Opt Out:**

Hi this is Ann with a recorded reminder from [Retailer] that our Memorial Day Sale starts this Monday, May 22nd. We're taking new and additional markdowns

of up to 70% on select Spring and Summer fashions. Also, as a bonus, selected styles will be reduced an additional 25%! These great savings will go fast, so hurry in for the best selection! Please press the pound key to repeat this message or call 1-877-# with any questions. To no longer receive these exclusive telephone offers, please press 1. Thank you from [Retailer]!

**Results:**

Client saw a 28.4% lift in response and a lift in net sales of 27.1%

**4. Calls for Non-Profit**

Client used the following script to remind donors that a recent direct mail piece had been sent allowing them to make a donation.

**Script for Live Message with Opt Out:**

Hello, this is Father Jack with a pre-recorded message from [Charity] at 1-800-#. I just placed in the mail for you our beautiful Easter cards and an opportunity to enroll loved ones in our Novena of Masses. This novena begins on Easter Sunday. Please watch your mail and return your response card as soon as possible. Your gift helps us spread the joy and hope of the Resurrection to people broken by poverty and misfortune. May God bless you this day and everyday. To no longer receive messages from [Charity] via telephone, please press 1. Thank you and God Bless.

**Results:**

An average of 37% increase in donations through voice marketing.

**B. Response by Consumers to Specific Uses.**

Our clients and their customers have overwhelmingly provided positive responses to our messages. Examples are as follows:

**Testimonial 1:**

*"[Our company] has been utilizing MessageBroadcast for the past two years. Each month we release Voice Marketing campaigns to our current customers...because of consistent results, Voice Marketing has been and will continue to be a successful part of our marketing mix. It has proven to be a well-adapted medium for driving a significant volume in very short turnaround times. I've tested and looked at various other Voice Marketing vendors but have chosen MessageBroadcast as a clear winner for us."*

**Testimonial 2:**

*"We have been working with MessageBroadcast to set up and test their services. We have been very pleased with the service, professionalism and results the team has delivered. We used a test and control and found that the MessageBroadcast results significantly outpaced the control. As we continue to grow as a company*

*and expand our promotional products/services we will be thinking of ways to use a variety of MessageBroadcast services to help us achieve our goals. Your team has been excellent to work with and they have paid attention to detail to ensure that the campaigns were flawless. Thank you for providing superior service and results.”*

**Testimonial 3:**

*“I’ve had a great experience using MessageBroadcast for our new product launches. With our first campaign we were able to generate a significant number of additional sales by utilizing Voice Marketing as complementary avenue for alerting our customers of a new product. It was truly amazing, our phones lit up almost instantaneously. We actually had to add some additional telephone lines before running our second campaign. To my surprise, it was amazingly simple to set-up a campaign from start to finish, the client services team made the whole process seamless.*

*In addition, the overwhelming majority of our customers welcomed the call and stated, I’ve been waiting for this product, thank you for calling to let me know it was available to purchase. We have finally found a cost effective medium for keeping our customers informed about new product launches. I highly recommend this service.”*

**Testimonial 4:**

*“We very pleased with MessageBroadcast. Replacing representative with voice marketing has led to less customer complaints. Our customers are enjoying messages and look forward to receiving them.”*

### **III. COMMENTS REGARDING PROPOSAL**

#### **A. Requests for Clarification**

The Proposed Rule says telemarketing calls can’t be sent without express signed consent in writing. Two areas of clarification are needed.

First, what constitutes telemarketing and what constitutes a message which is “informational” and/or not subject to this restriction? Does a reminder call for a service appointment fall in this ban? What about a thank you call? What about a survey? What about a notification to customers of an event? What about a follow up call to a previous transaction asking if the consumer had any questions?

Will the FTC allow calls which are not telemarketing to be placed to live persons, with other types of legal calls placed to answering machines? For example, can a campaign deliver a survey call to live persons, and a reminder call to answering machines?

Second, what constitutes express signed consent? Can you get it on the internet? What about using other means compliant with E-SIGN, which allows a electronic sound or signal to suffice as a signature in certain circumstances? Will the FTC give some relief to entities which use calls (welcomed by customers) to existing databases? Note that customers in existing databases have had opportunities to opt out, and have chosen not to opt out. Doesn't that provide the same level of assent that the FTC seems to want in the form of express written consent?

## **B. Response to General Questions**

### **1. What is the effect (including any benefits and costs), if any, on consumers?**

A large private label credit card client deployed an important customer notification to their current customers for card activation. Client experienced a 16% lift in response over their control group. Script follows:

#### **Informational Live Message Script:**

Hi, this is Rebecca with a recorded message from [Bank]. In order to confirm receipt of your new credit card and begin using it immediately, please call 1-888-831-5717 to activate today. If you have already called to activate your card no further action is needed. Thank you for choosing [Bank].

Consumers would be harmed if the Bank could no longer use this effective and inexpensive means to confirm receipt of ordered products.

### **2. What is the impact (including any benefits and costs), if any, on individual firms that must comply with the Rule?**

Budgets for marketing efforts would significantly increase due to the costs of other channels of communication with their customers. Additionally, customer contact can be verified at an exceptionally high rate over other forms of marketing. Typical message left rate for voice marketing is 85%.

### **3. What changes, if any, should be made to the proposed Rule to minimize any costs to industry, individual firms that must comply with the Rule, and/or consumers?**

We believe the FTC should reverse its denial of the petition for proposed rulemaking.

We also believe that the FTC should issue the clarifications requested above in III.A.

We also believe that, in any event, customers who have not chosen to opt out of existing databases should be treated as having given express written consent.

**4. How would each suggested change affect the benefits that might be provided by the proposed Rule to industry, individual firms that must comply with the Rule, and/or consumers?**

Suggested changes could limit customer communications due to increased costs, variations in consistency and speed of contact (i.e. live telemarketers, direct mail, etc.).

**5. How would the proposed Rule affect small business entities with respect to costs, profitability, competitiveness, and employment?**

Small business budgets for marketing efforts would significantly increase due to the costs of other channels of communication with their customers. Additionally, customer contact can be verified at an exceptionally high rate over other forms of marketing. Typical message left rate for voice marketing is 85%.

**C. Response to Questions on Specific Issues**

**1. Should the Commission include an explicit prohibition of prerecorded telemarketing calls in the TSR?**

No, the Commission should not include any prohibition of prerecorded calls in the TSR. There has been no study proving that prerecorded calls are inherently abusive. In fact, our experience is to the contrary.

**2. Is the Commission correct in its understanding that a reasonable consumer would consider prerecorded telemarketing sales calls and prerecorded charitable solicitation calls to be coercive or abusive of his or her right to privacy?**

No. MB adheres to or exceeds all state and federal compliance requirements including all do-not-call regulations. All customer requests for opt out and additions to do-not-call lists are managed and maintained ongoing.

**3. Does a consumer's choice not to list his or her telephone number on the Do-Not-Call Registry indicate not only that he or she is willing to accept live telemarketing calls, but also prerecorded telemarketing calls?**

Yes, but the same exemptions apply such as express consent and calls to established customers.

**4. What is the effect on consumers' privacy interests, if any, of not applying the call abandonment safe harbor requirements to calls left on consumers' answering machines?**

None. Abandonment by definition involves calls answered by live persons. Calls answered by machines can not be abandoned.

**5. Are prerecorded messages left on answering machines less intrusive than prerecorded messages answered by a person?**

Yes, but calls answered by a person can be welcomed, non-intrusive, and valuable for both the caller and the recipient of the call.

**6. What are the costs and benefits to consumers, if any, of allowing companies to leave prerecorded messages, as opposed to live messages, on consumers' answering machines? Do consumers incur additional costs in terms of (a) paying for storage of messages they do not want; (b) exceeding their allotted storage capacity; (c) being unable to receive messages they want or need; (d) being unable to use home telephone lines tied-up by prerecorded messages; or (e) retrieving messages? Do consumers receive additional benefits, such as lower marketing costs that are eventually passed on to them?**

Marketing budgets overall may be increased. As a result of additional use of live telemarketing and direct mail, it is reasonable to assume that this increased cost may impact the final price of consumer goods. The voice marketing channel offers many benefits to the consumer including, but not limited to, rapid access to offers and benefits provided by companies they are currently doing business with.

**7. What are the costs and benefits to companies in not having to apply the call abandonment safe harbor limit to calls left on answering machines?**

Marketing budgets may be increased as a result of additional use of live telemarketing and direct mail.

#### **IV. CONCLUSION**

MB requests that the Commission permit the continued use of prerecorded messages, without the additional burdens that would result from the Commission's denial of the petition for rulemaking. We also request that the Commission clarify the definitions of "Telemarketing," "Informational Messages," and "Express Written Consent." Finally, we request that customers who have chosen not to opt out of existing databases be considered as having given express written consent to continue to receive prerecorded telemarketing messages.

Our customers have welcomed and continue to welcome these messages. No consumer injury would result if telemarketers are permitted to continue these beneficial practices, but our valuable assets such as databases will be damaged, if the FTC does not provide the relief we seek.

Respectfully submitted by:

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