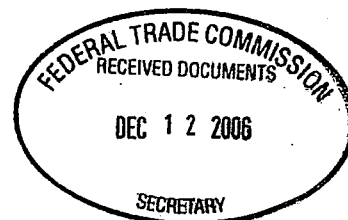




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December 7, 2006

Federal Trade Commission
Office of the Secretary
Room H-159 (Annex K)
600 Pennsylvania Avenue, N.W.
Washington DC 20580

RE: Prerecorded Call Prohibition EBR Telemarketing, Project No. R411001

Superior Communications and Consulting Inc. appreciate this opportunity to present our opposition to the proposed rulemaking with regards to the Telemarketing Sales Rule.

The FTC and FCC call abandonment rules with regards to the sending of prerecorded phone calls are in conflict. The FCC's rules expressly state that a call placed to someone with whom the caller has an Established Business Relationship (EBR) is not "abandoned" when it connects to a prerecorded sales message rather than a live representative, so long as the recording begins within two seconds of the called party's greeting. In essence the FCC is properly differentiating between prerecorded calls and calls that essentially hang up on people. The FTC's new rule seeks to improperly treat successfully delivered prerecorded phone calls to a live people as "abandoned" calls even in the event the caller has an EBR and even when the call is clearly "a wanted call" by the recipient.

The FTC's proposal would offer an EBR exception only if the sending party has obtained prior expressed written consent from the call recipient. In essence the FTC wishes to treat hang up calls and prerecorded calls placed to someone with whom the caller has an Established Business Relationship as one in the same unless a signature is involved.

The FCC rule seems to have taken reasonable steps to provide consumers the ability to assert the Do Not Call right protection they seek while providing businesses the right to contact those with whom there is an Established Business Relationship. The FTC's willingness to forbear enforcement supports the importance of the EBR.

The FTC's proposal is an attempt to provide an EBR exception by way of an unrealistic, expensive, burdensome, written consent rule that would be impossible for businesses to comply. In reality the FTC's new rule eliminates the FCC's EBR exception, thereby prohibiting pre-recorded messages unless the sending party has obtained expressed written consent from each call recipient. The elimination of the FCC's EBR exception is

harmful to business, an invasion of businesses and consumers privacy and plays no role in protecting the consumer against unwanted pre-recorded calls but rather seeks to prohibit all sales calls including calls that would otherwise be welcome by consumers who would clearly benefit by receiving these relationship oriented based calls.

Current rules provide very effective options that allow consumers to assert their Do Not Call Rights and shield the consumer from unwanted telemarketing calls. Consumers can place their phone number on the highly successful National Do Not Call Registry or simply make a direct request to the calling party that he or she does not wish to receive future sales calls. The existing rule places the power to decide what calls should be prohibited and what calls should be allowed in the hands of the consumer.

On March, 30, 2006 in a prepared statement of the Federal Trade Commission, Deborah Platt Majoras "Committee on Appropriations " reported that the National Do Not Call Registry contains more then 120 million telephone numbers, compliance has been high and that Consumer Surveys confirm the success of the National Do Not Call Registry. Deborah Platt Majoras goes on to report that a January 2006 Harris Poll reported that 92% of those registered reported receiving fewer telemarketing calls. This statement by Deborah Platt Majoras (which can be viewed on the web at <http://appropriations.house.gov/index.cfm?Fuseaction=Hearings.Testimony&HearingID=723&WitnessID=991>) is important because it makes very clear the fact that consumers have the ability to assert their "Do Not Call Rights" and that" industry compliance is high". In essence consumers have an existing mechanism in place to shield them from unwanted calls and because the industry is compliant direct requests for removal buy the caller should not be treated as suspect. If these two statements by Deborah Platt Majoras are true then clearly the FTC's proposal is unnecessary and far to invasive. The commission should not interfere with a businesses rights to send prerecorded calls to those whom there is an EBR. This new rule will ultimately prohibit all pre-recorded sales calls including calls that the consumer would want to receive. The commission must take into consideration the fact that a pre recorded phone call sent by a seller to a person with an EBR that results in the sale of goods or services simply cannot be defined as unwanted or abusive or abandoned.

It is my understanding that the commission endorsed an interactive mechanism that would permit the calling party to opt out but ultimately rejected this proposal due to lack of support from consumers and industry. Clearly those that rejected this proposal are not properly informed. The ability to simply press a "single" number on your telephone key pad that would instantly result in the removal of the caller's phone number from the calling parties call list is by far the easiest and most reliable means by which a consumer can assert their Do Not Call Rights. This technology is readily available and easily accessible to the business community at a very low cost. Phone number removal can be instant and accomplished with or without speaking to a live representative. The consumer has the option to opt out automatically or via a live person who could also provide the consumer with additional information about the product or service. Those that rejected the proposal based on the flawed concept that the technology is burdensome, expensive or not widely available are simply wrong. A simple "single" key press opt out mechanism is a practical solution for business and consumer.

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Businesses that wish to comply with the new rule will face the task of obtaining the necessary written authorization. Obtaining written authorization is so large a task that it is simply not practical to assume that any businesses will be able to comply. This new rule would induce irreparable harm to businesses that rely on sales related prerecorded voice messaging. Businesses and consumers will suffer significantly if this unnecessary rule is implemented.

The relationship between a business and its customers is critical to the success of all businesses and I can find no compelling reason to support a rule that would interfere with that relationship. I ask the commission do everything in its power to protect and preserve the ability of businesses in a non burdensome manner to contact those which whom they have an EBR.

I respectfully ask request that the commission take the time necessary to come up with practical solutions that will provide proper and reasonable balance in protecting the consumer from unwanted telemarketing calls, allow consumers to exercise their Do Not Call Rights without hardship or expense to businesses that wish to send pre-recorded telemarketing calls to those with an Established Business Relationship.

Based on the reasons stated above I urge the commission to either adopt the TCPA rule that provides an exception to businesses that send prerecorded sales calls to those to whom there is an Established Business Relationship or at the very least continue the commissions forbearance from enforcement actions against businesses that deliver prerecorded messages to customers to whom businesses have an Established Business Relationship with their customers beyond January 2, 2007.

Sincerely,

Lester Morales

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