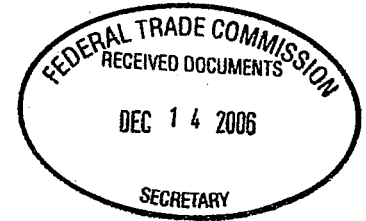


Federal Trade Commission  
Office of the Secretary, Project No. R411001  
Room H-159 (Annex K)  
600 Pennsylvania Avenue, N.W  
Washington, D.C. 20580



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

As a consumer and electrical engineer, I am opposed to the amendment to the TSR proposed by the FTC ("Commission") requiring a signature as evidence of express permission to receive prerecorded telemarketing calls, where an established business relationship (EBR) exists between the consumer and the seller.<sup>1</sup> This language proposed by the Commission is overly broad, as there exist more limited means to advance the Commission's interest of preventing abusive telemarketing practices. The requirement of a signature as evidence of express permission to receive a prerecorded sales related call where an EBR exists is too burdensome for businesses and will kill other emerging technologies that utilize prerecorded sales messages and the benefits they offer to consumers. One such technology is an interactive prerecorded telemarketing call which is not abusive according to the standards the Commission has defined. Telemarketing calls that are both prerecorded as well as respond to consumer key presses and speech present consumers more benefits than do calls from live telemarketing representatives or calls consisting of prerecorded telemarketing messages that do not respond to consumer input.

An interactive prerecorded telemarketing call ("IPTC") as defined in this document, is a call that includes prerecorded sales messages and allows a consumer with whom the seller has an EBR, not evidenced by a signature, to respond to the seller with key presses and the spoken word

<sup>1</sup> FTC, 16 CFR Part 310, RIN: 3084-0098, p39: "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... 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."

during the call. For example, an IPTC can say “To be placed on our company Do No Call list, press or say five,” and then perform that request instantly.

The Commission correctly recognized that an interactive mechanism<sup>2</sup> could preserve the delicate balance it “has struck between legitimate, but competing, privacy and communication interests.”<sup>3</sup> However the Commission went on to not support such an interactive mechanism, in part, due to a lack of support by industry.<sup>4</sup> Its reasonable to conclude, had the Commission asked industry to choose between offering IPTCs versus complying with the signature provision of the proposed TSR amendment, industry would choose the option that impacts their business the least, namely the option to provide IPTCs. The Commission also cited perceived limitations of interactivity in asserting entity specific Do Not Call rights on the part of the consumer, and the Commission concluded interactivity would not advance the Commissions interests. This conclusion is incorrect as it is based only on a partial knowledge on the part of the consumer and partial analysis on the part of the Commission, of the capabilities of interactivity. Interactivity presents the Commission with a more limited means to advance its anti-abuse interest and preserve the balance between privacy and communication. The Commission concluded: “[Consumers] find prerecorded calls more coercive and abusive than live telemarketing calls because they are powerless to interact with a recording, either to assert their Do Not Call rights or to request additional information about the product or service offered.”<sup>5</sup> However, IPTCs empower the consumer to do all of the above and more, and do so in ways that exceed the capabilities of both non-interactive prerecorded telemarketing calls and live telemarketing calls.

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<sup>2</sup> FTC, 16 CFR Part 310, RIN: 3084-0098, p36: “The Commission specifically endorsed an interactive mechanism that would permit the party called to connect to a sales representative during the message by pressing a button on the telephone keypad.”

<sup>3</sup> FTC, 16 CFR Part 310, RIN: 3084-0098, p35

<sup>4</sup> FTC, 16 CFR Part 310, RIN: 3084-0098, p36 “Most of the sellers and telemarketers who commented on the proposed interactive mechanism objected to it as costly, burdensome, and not widely available.”

<sup>5</sup> FTC, 16 CFR Part 310, RIN: 3084-0098, p41

IPTCs are less abusive than both live telemarketing calls and prerecorded telemarketing calls and are therefore a benefit to the consumer. IPTC are less abusive in the following ways:

1. IPTCs do not hang-up on consumers.
2. IPTCs allow more consumers to assert their entity specific Do Not Call rights than do non-interactive prerecorded or live telemarketing calls.
3. IPTCs allow consumers to more “quickly, effectively and efficiently”<sup>6</sup>, per the Commissions standard, assert their entity specific Do Not Call rights than do non-interactive prerecorded or live telemarketing calls.
4. IPTCs will allow consumers more options than non-interactive prerecorded or live telemarketing calls.

#### **IPTCs do not hang-up on consumers**

The TSR limits the abandonment rate of predictive dialers to a “three (3) percent maximum ‘per day per calling campaign,’ as prescribed in § 310.4(b)(4)(i), to limit ‘hang ups’ and ‘dead air,’”<sup>7</sup> because hang-ups and dead air have been determined to be abusive. However, consumers unfortunate enough to be in the 3% that receive hang-ups will not receive any benefit from this requirement. However, IPTCs do not hang up on any consumers, representing a benefit to consumers in the elimination of hang-ups as well as dead air.

#### **IPTCs allow more consumers to assert their entity specific Do Not Call rights than do non-interactive prerecorded or live telemarketing calls**

IPTCs provide mechanisms for consumers to assert their entity specific Do Not Call rights that exceed the capabilities of live representative telemarketing conducted with predictive dialers as well as non-interactive prerecorded telemarketing calls. IPTCs can include the following function: “To be placed on our company Do No Call List, press or say five”. This functionality is completely absent in non-interactive prerecorded telemarketing calls, so IPTCs represent a benefit to the consumer in comparison. When compared to a live representative telemarketing campaign conducted with a predictive dialer, IPTCs allow consumers to assert their entity specific Do Not Call rights on calls that would otherwise have been abandoned by the

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<sup>6</sup> FTC, 16 CFR Part 310, RIN: 3084-0098, p37

<sup>7</sup> FTC, 16 CFR Part 310, RIN: 3084-0098, p43

predictive dialer after the consumer has answered the call. The Commission also recognized the rights of consumers who do not have touch-tone keypads.<sup>8</sup> While their numbers are small when compared to consumers with touch-tone keypads, these consumers' rights would be preserved by IPTCs' ability to respond to the spoken word. When looking at the rights of other comparatively small groups, IPTCs can go beyond the capabilities of a live representative and allow consumers who are unable or unwilling to speak exercise their entity specific Do Not Call rights with the key press option. In fact, IPTCs' ability to allow consumers to assert their entity specific Do Not Call rights is so thorough, that IPTCs even extend that option consumers who have at some point given a seller written permission to receive sales calls, but later decide to assert their entity specific Do Not Call rights. In the Commission's proposed amendment, consumers who do give their written permission to receive non-interactive prerecorded telemarketing calls are still subject to the same burdens recognized by the Commission presented by non-interactive prerecorded sales calls. However, IPTCs can present consumers options to assert their entity specific Do Not Call rights on all calls. IPTCs represent a benefit to consumers because they allow more consumers to assert their entity specific Do Not Call rights than do non-interactive prerecorded or live telemarketing calls.

**IPTCs allow consumers to more “quickly, effectively and efficiently”<sup>9</sup>, per the Commissions standard, assert their entity specific Do Not Call rights than do non-interactive prerecorded or live telemarketing calls**

The speed at which a consumer can “press” or “speak” a single digit to assert their entity specific Do Not Call rights far exceeds the speed that a similar request can be made of a live representative and non-interactive prerecorded telemarketing calls lack this function completely. In addition, a consumer may feel compelled not to interrupt a live representative's sales message to assert their Do Not Call rights, prolonging the call, whereas no such compulsion would be felt on the part of the consumer during an IPTC. The Commission also noted comments that prerecorded messages left on answering machines pose an additional encumbrance to a consumer

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<sup>8</sup> FTC, 16 CFR Part 310, RIN: 3084-0098, p36 “advocates protested that the mechanism would be ineffective because touchtone keypads are not universal”

<sup>9</sup> See footnote 6

in asserting their entity specific Do Not Call rights,<sup>10</sup> however these comments propose an incorrect conclusion as even a non-interactive prerecorded telemarketing message left on an answering machine presents no additional encumbrance when compared to a telemarketing message left on an answering machine by a live representative. IPTCs exceed both non-interactive prerecorded telemarketing calls and live telemarketing calls in terms of the “quickly, effectively and efficiently” standard for consumers asserting entity specific Do Not Call rights.

**IPTCs will allow consumers more options than non-interactive prerecorded or live telemarketing calls**

The options available to consumers who receive IPTCs exceed those provided by non-interactive telemarketing calls and live telemarketing calls. Non-interactive telemarketing calls provide a single message, which may include a call back number. IPTCs can include multiple messages, additional product information, as well as options to speak with a live representative. In fact, providing the consumer the choice of whether to speak with a live representative or not represents a clear benefit over a telemarketing campaign conducted solely with live representatives. Personally, I prefer not to talk to a live telemarketing representative, but rather like to interact with the seller using the interactive features provided by the IPTC.

In conclusion, prerecorded telemarketing calls that are interactive as defined in this document represent a benefit to consumers over non-interactive prerecorded as well as live telemarketing calls. The Commission’s proposed amendment to the TSR requiring a signature as evidence of express permission to receive a sales calls with prerecorded messages in them is overly broad and too burdensome for businesses to implement and will prevent interactive telemarketing calls as well, calls which otherwise represent a net benefit to the consumer over live telemarketing and non-interactive prerecorded telemarketing calls. I ask the Commission to alter the proposed amendment in such a way as to allow interactive telemarketing calls to consumers who have an existing business relationship not evidenced by a signature and to continue beyond January 2, 2007 to forbear from enforcement actions against businesses and

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<sup>10</sup> FTC, 16 CFR Part 310, RIN: 3084-0098, p36-37 [In consumer advocates’ view] “most prerecorded messages end up on answering machines or voice mail services, so that the interactive mechanism would not materially assist consumers in avoiding the costs and encumbrances of asserting their company-specific opt-out rights”

charities that deliver pre-recorded sales messages to customers with whom there is an existing business relationship so other options can be considered.

Thank you for the opportunity to comment.

Sincerely,

Mark Schwartz