

**FEDERAL TRADE COMMISSION**

**16 CFR Part 310 RIN:**

**3084-0098 Telemarketing Sales Rule (“TSR”) AGENCY:**

**Federal Trade Commission ACTION:**

Denial of petition for proposed rulemaking; revised proposed rule with request for public comments; revocation of non-enforcement policy.

The proposed amendment would prohibit only the initiation of a call “that delivers a prerecorded message when answered by a person.” The Commission specifically seeks comment on whether the limitation “when answered by a person” is necessary and appropriate or whether the prohibition on prerecorded messages should be extended to calls answered by a voicemail system or an answering machine. For example, the intrusion of a telemarketing call delivering a prerecorded message would seem less disruptive if it arrives when the party called is not home than if it arrives when he or she is at home in the midst of daily activities. Nevertheless, the Commission seeks comment on whether there are other harms when a telemarketing call delivering a prerecorded message is answered by an answering machine or voice mail service, and whether such harms rise to the level of an intrusion that the “reasonable consumer would consider coercive or abusive of such consumer’s right to privacy.”

**COMMENTS OF STEWART N. ABRAMSON**

I urge the FTC to strike the words “when answered by a person” from it’s proposed rule.

I urge the FTC to extend the prohibition against outbound telemarketing calls that deliver prerecorded messages to calls that are answered by a voicemail system or an answering machine.

I urge the FTC to modify it’s proposed rule so that it prohibits “initiating any outbound telemarketing call that delivers a prerecorded message, unless the seller has obtained the express agreement, in writing, of such person to place prerecorded calls to that person.”

I hate receiving outbound telemarketing calls that deliver prerecorded messages, and everyone that I know hates receiving outbound telemarketing calls that deliver prerecorded messages. I believe that such prerecorded telephone messages are annoying, frustrating, coercive, and abusive. This is no less so, and sometimes even more so, when the prerecorded message is left on my voice mail or answering machine.

When I am at home I often use my answering machine to monitor or screen incoming calls. I listen to the messages as they are being left on my answering machine, and thereby decide if I should pick up the phone at that time and talk with the caller. I believe that many people use their answering machines to screen their incoming calls in the same way that I do. Thus prerecorded telemarketing messages that are left on my answering

machine are often just as disruptive to me as the prerecorded telemarketing messages that I pick up before my answering machine.

A prerecorded message is no less coercive and abusive when it is left on my answering machine or voice mail, then if it is received by me person. Either way, I have to listen to the prerecorded message, and then figure out if there is any way that I can identify the caller or respond to the caller to tell them not to call me any more. I would estimate that I receive an average of one prerecorded telephone message a week, and that 98% of the prerecorded telephone messages that I receive fail to provide any way to contact the caller directly.

If I am away for an extended period of time I will sometimes call home to see if there are any messages left on my voice mail or answering machine. If I am out of town I sometimes have to pay toll charges, long distance charges, or cell phone minutes to call into my voice mail or answering machine. It is extremely frustrating when I have to pay to listen to prerecorded telemarketing messages that were left on my voice mail or answering machine.

My answering machine and voice mail do not have an unlimited capacity. If telemarketers are free to leave prerecorded messages on my voice mail or my answering machine, then I fear they will fill up the available space and prevent me from being able to receive messages that I want to receive from friends and relatives.

It is very difficult for an automated outbound dialing system to accurately determine if a call has been answered by a person or by an answering machine. Presumably this is accomplished by using some kind of "Answering Machine Detection" software. Usually AMD software distinguishes a live person from an answering machine based simply on the length of the called party's greeting. Most live people greet a caller by simply saying "Hello", while most answering machines greet a caller by saying something like "Hello. You've reached Joe's house. I'm not home right now. Please leave a message after the tone." However, sometimes I greet callers with an extended greeting such as "Hello, it's a beautiful day in the neighborhood, a beautiful day indeed, who is this and how can I help you?" Presumably most AMD software would conclude that I am an answering machine based simply on the length of my extended greeting, and they would proceed to play their prerecorded message. Why must I be subjected to such an annoyance simply because I choose to greet a caller with something more interesting than a simple "Hello"?

While the FTC may not be required to make rules that are consistent with the FCC, it would seem to be in the best interest of all concerned if the FTC's rules and the FCC's rules were consistent. The FCC, under the TCPA, currently prohibits the initiation of prerecorded telephone solicitations without the called party's prior express consent (irrespective of how the calls are answered, or indeed if they are even answered at all). It would be confusing to those who make prerecorded telemarketing calls, and to those who receive them, if the FTC was to allow such calls to be delivered to answering machines and voicemail systems, while the FCC prohibited such calls.

In conclusion, I hate receiving outbound telemarketing calls that deliver prerecorded messages, I believe that such prerecorded telephone messages are annoying, frustrating, coercive, and abusive, and I urge the FTC to strike the words “when answered by a person” from its proposed rule. I urge the FTC to prohibit “initiating any outbound telemarketing call that delivers a prerecorded message, unless the seller has obtained the express agreement, in writing, of such person to place prerecorded calls to that person.”

Thank you for considering my comments.

Sincerely  
Stewart Abramson