

Contact Center Compliance Seminar



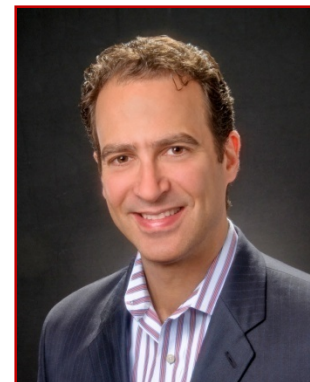
*Bringing you the **ANSWERS**
you need about compliance
in your call center.*



American Teleservices Association

Outbound Prerecorded Messages

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Different Rules for Different Folks

-- Whose Rules Apply?

- Federal Trade Commission
 - No jurisdiction over banks, airlines, nonprofits, common carriers.
 - Third party vendors?
 - TSR applies only to sales calls.
- Federal Communications Commission
 - Jurisdiction over all entities that initiate interstate calls.



Why Should We Care?

- FTC Focus
 - “Issues related to prerecorded and abandoned calls remain of high interest to consumers , [the] industry, and the FTC.”
 - J. Thomas Rosch, FTC Commissioner, April 24, 2007



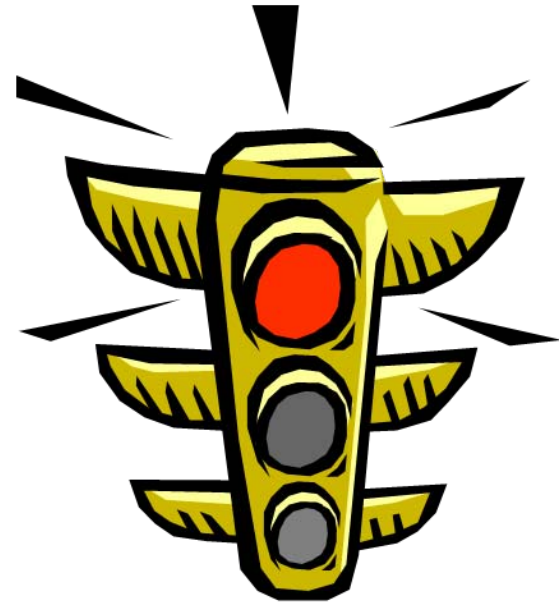
- Enforcement Actions
 - The Broadcast Team / \$3,000,000 Settlement



Federal Communications Commission Telephone Consumer Protection Act

Generally prohibits the transmission
of prerecorded messages.

But . . .



Federal Communications Commission

Telephone Consumer Protection Act

... TCPA authorizes narrow but effective carve-out for certain prerecorded messages to residential numbers.

- Made for emergency purposes
- Prior express consent of called party
- Not made for commercial purposes
- Made for commercial purpose, but does not constitute a telephone solicitation / advertisement
- Made to person with whom caller has an established business relationship
- Made on behalf of a tax-exempt, nonprofit organization



Federal Communications Commission

Telephone Consumer Protection Act



- Identity of entity responsible for initiating the call
 - business name under which entity is registered to conduct business in its home state
- Telephone number of such business for telemarketing calls
 - must be a number that will allow a person to make entity-specific DNC request if called during normal business hours for duration of campaign





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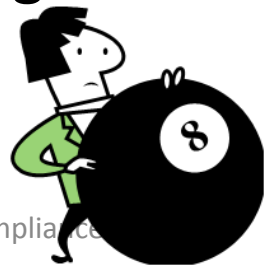
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Federal Trade Commission Telemarketing and Consumer Fraud and Abuse Prevention Act

- Telemarketing Sales Rule
 - 1994: No restriction on use of prerecorded messages.
 - 2003: Abandoned call prohibitions.
 - 2004: Temporary Restrictions on Prerecorded Messages
 - 2008: Final Regulations on prerecorded messages.



FTC Proposed Rulemaking

November 2004

November 2004 NPRM -- FTC attempts to make its rule more consistent with FCC rule.

- Prerecorded messages not considered abandoned calls if:
 - transmitted to person with whom seller has established business relationship
 - Allows telephone to ring for 15 seconds or 4 rings



FTC Proposed Rulemaking

November 2004

November 2004 NPRM -- FTC attempts to make its rule more consistent with FCC rule.

- Within 2 seconds of completion of called party's greeting, play a recorded message that:
 - Presents an opportunity to assert an entity specific DNC request at the outset of message.
 - Only prompt disclosures required by TSR preceding opportunity



Recent Rulings:

- FTC Final Order: The “Net-Net” (August 2008)
 - Places certain restrictions on the use of prerecorded messages when a call is answered by a person or voicemail or answering machine.
 - Ultimately limits future use of prerecorded messages to those based upon express written consent only.
 - Establishes a timeline for compliance with such restrictions.
 - Specifically exempts prerecorded healthcare messages made by or on behalf of covered entity or its business associate, pursuant to HIPAA.



FTC Final Order: The “Net-Net”

- General Provisions:
 - Prerecorded messages allowed if based upon “Established Business Relationship” or Express Written Consent;
 - Must allow phone to ring for 15 seconds or 4 rings;



FTC Final Order: The “Net-Net”

- “Commercial” Calls: General Provisions
 - Must commence message within 2 seconds of completed greeting that promptly discloses:
 - Identity of seller
 - Purpose of call is to sell goods or services
 - Nature of goods or services
 - Prize disclosures



FTC Final Order: The “Net-Net”

- “Charitable” Solicitations: General Provisions
 - Must commence message within 2 seconds of completed greeting that promptly discloses:
 - Identity of charitable organization on behalf of which the request is being made;
 - The purpose of the call is is to solicit a charitable solicitation.



FTC Final Order: The “Net-Net”

- As of December 1, 2008:
- Followed immediately by:

If Call May Be Answered by a Person:

- Interactive voice or key-press activated mechanism to assert DNC request;
- Automatically add number to DNC list;
- Immediately disconnect the call;
- Available at any point during the call.



FTC Final Order: The “Net-Net”

- As of December 1, 2008:
- Followed immediately by:

If Call May Be Answered by Voicemail or an Answering Machine:

- Provide toll free telephone number to assert DNC request;
- Number provided must connect to interactive voice or key-press activated opt-out;
- Immediately disconnect the call;
- Available at any point during call.





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FTC Final Order: The “Net-Net”

- As of September 1, 2009:
 - Express Written Consent Only:
 - Must clearly and conspicuously disclose that purpose of agreement is to allow prerecorded calls.
 - Cannot require that agreement be executed as condition of purchase of goods or services.



FTC Final Order: The “Net-Net”

- As of September 1, 2009:
 - Express Written Consent Only:
 - Evidences willingness of recipient to receive prerecorded messages by or on behalf of specific seller.
 - Includes recipient’s telephone number and signature (electronic is acceptable).
 - » Specifically acknowledges E-SIGN



Express written consent

- FTC guidelines for consent
 - location of language on pre-printed forms
 - font requirements
 - must be affirmative consent
 - sweepstakes?
- Email permissions acceptable in virtually all states transmission of email generally





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Where In the World Are We Now?

FCC – May transmit prerecorded messages to residential telephone numbers if:

- For emergency purpose
- Prior consent
- Not a commercial call
- Commercial call without solicitation to EBR
- By or on behalf of tax exempt, nonprofit.



Where In the World Are We Now?

FTC: May transmit prerecorded messages if:

- Not a sales solicitation
- Transmitter is bank, common carrier, non-profit / charity, airline.
- Have express written consent and comply with other messaging requirements



Audience Questions and Answers (supplied via text message)



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