



The Amended Telemarketing Sales Rule on Pre-recorded Voice Sales Messages!

Be Ready - Ventriloquist's Guide to Successful Compliance!

October, 2008

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Dear Valued Customer,

On August 19, 2008, the Federal Trade Commission (FTC) announced its amendments to the Telemarketing Sales Rule (TSR) specifically related to pre-recorded outbound telemarketing messages. These new rules only apply to calls that induce the purchase of any good or service. They **do not apply** to informational messages. Ventriloquist Voice Solutions has reviewed the amendments and discussed them with the DMA. The changes have three important amendment dates, which are:



- 1. December 1, 2008** - Pre-recorded telemarketing calls must provide an automated interactive opt-out mechanism (Keypress or voice activated)
- 2. September 1, 2009** - Telemarketers must obtain an Express Agreement from consumers in order to make pre-recorded telemarketing sales calls.
- 3. October 1, 2008** - New method to measure the maximum call abandonment rate for the TSR's safe harbor (which can be measured over a 30-day period).

The DMA has advised that these amendments all require compliance. Below are the requirements and Ventriloquist's perspective & recommended solutions. We are already working with some of our clients.

The most relevant rule is the requirement to have permission to make pre-recorded solicitation calls as of September 1, 2009.

Ventriloquist has designed this newsletter to help you comply with the amended TSR, which represents our best interpretation based on our knowledge, our discussions with the DMA, our ongoing review of detailed documents. However, you are advised to run any (wording) by your legal counsel for final advice and guidance.

Disclosure Requirement and Opt-Out Mechanism - December 1, 2008

By December 1, 2008, any outbound prerecorded message that induces the purchase of any good or service must:

1. Allow the telephone to **ring for at least 15 seconds or 4 rings** before disconnect.
2. **within 2 seconds** of the completed greeting to the consumer, begin the disclosure message including:
 - i. The identity of the seller.
 - ii. The purpose of the call is to sell goods or services.
 - iii. The nature of the goods or services.
 - iv. If a prize promotion is offered, that no purchase or payment is necessary to be able to win a prize or participate in a prize promotion and that any purchase or payment will not increase the person's chances of winning.
3. Follow the disclosure message with an **opt-out mechanism**:

If answered by a consumer, he/she must be able to "use an automated interactive voice and/or keypress-activated opt-out mechanism to assert a company-specific do-not-call request that must meet 3 requirements:

- i. Automatically add the number called to the seller's entity-specific do-not-call list.
- ii. Immediately disconnect the call.
- iii. Be available for use at any time during the message.

If answered by an answering machine or voicemail service, the person called must be able to use a toll-free telephone number to add him - or herself to the company specific do-not-call list that must meet 2 requirements:

- i. Automatically add the number called to the seller's entity-specific do-not-call list. (Same)
- ii. Be available for use at any time throughout the duration of the telemarketing campaign.

Ventriloquist Perspective & Services: *Most of our clients already have an internal do-not-call list that Ventriloquist manages. We will have the additional requirement of opt-out mechanism at any time ready before the FTC deadline. This will require clients to add the opt-out message after the introduction.*

e.g. "Hi this is <Caller Name> from <Company Name> calling about your <Purpose and Nature of Goods or Services>. Press the star key at any time or call 1-800-XXX-XXX to be placed on our do-not-call list".

Express Agreement -- September 1, 2009 - Initiate this Process NOW!



By September 1, 2009, any outbound pre-recorded message that induces the purchase of any good or service, has to obtain a consumer's **express agreement** (Permission) as per [E-SIGN ACT](#) which allows for voice, email, and web to act as written agreements. The Express Agreement must meet these requirements:

1. Permission is **obtained only after a clear and conspicuous disclosure** that the purpose of the agreement is to authorize the seller to place prerecorded sales calls to the consumer.
2. Permission is obtained **without requiring**, directly or indirectly, that the agreement be executed as a condition of purchasing any good or service.
3. There must be **evidence of the willingness** of the consumer to receive calls that deliver prerecorded messages by or on behalf of a specific seller (e.g. Keypress to provide permission).
4. The agreement must include the consumer's **telephone number and signature** as defined by [E-SIGN ACT](#) which allows for voice, email, and web to act as written agreements.

Ventriloquist Perspective & Services: Express agreement is a respected "best practice" model. Since you have "EBR" with your customers, obtaining Express Agreement before next September is highly probable.

We also recommend asking for permission for all communication forms, prints, electronic (web & email) and telephone including pre-recorded voice messages. **It is a disclosure requirement of the TSR that you specifically request permission for "pre-recorded voice messages".**

Exemption from the Express Agreement

There are two exemptions for the solicitation calls:

1. **Charitable Fundraising Calls** to members or previous donors of a non-profit organization.
2. All **health care** related calls.

Examples of Requesting a Voice/Written Express Agreement

Below we outline the required disclosure to ensure the express agreement is valid. Here are verbal and written examples:

Written Express Agreement Example

Requesting for written Express Agreement should be put near the signature and be very visible and conspicuous. This can be put on any form or Sales receipt.

"I/We provide <Company Name> permission to communicate with me/us about their products, services and sales using print, electronic formats and by telephone (**including pre-recorded phone messages**) to the phone number (s) provided on this document."

Verbal Express Agreement Example

"Hi, this is <Name> of <Company Name> with an important message. We currently use pre-recorded telephone messages to deliver product, service and sales alerts to you. Our customers find them convenient, timely and environmentally friendly. To continue to send these sales offer alerts to **this phone number**, please press 1 at the prompt.

You can always opt-out at any time in future. Thank you. We look forward to continuing to earn your business."

Ventriloquist can provide verbal express agreement retrieval using both voice and keypress technology. We can also capture the specific phone number (s) as designated by the customer. We recommend beginning the process immediately by adding an express agreement request to the end of all your future campaigns. Ventriloquist will provide this service at no additional cost for the incremental time required.

Ventriloquist Voice Solutions recommends that whatever wording is selected, it is reviewed by your legal counsel to ensure compliance with the FTC.

3% Call Abandonment Rate in a 30-day Period - October 1, 2008

Unlike Ventriloquist, many telecommunication service providers use predictive dialers which may result in "dead air" and "hang-up" calls when no salesperson is available to take the call. The rule regulates:

1. **97%** calls that are answered in person (not by answering machine) be connected to a salesperson **within 2 seconds** after a consumer answers (same as before).
2. The 3% abandonment rate to be **calculated over a 30-day period** of the campaign rather than the current daily basis.

Call abandonment does not apply to Ventriloquist. We use a different technology. When your customer picks up the phone, the message plays immediately.

Next Step -- Get Your Permission Broadcast Initiated - Deadline September 1, 2009

Ventriloquist recommends you begin obtaining permission (Express Agreement) immediately. You **only have 10 months** to be in compliance. Ventriloquist can begin with your current clients by adding Express Consent message to your current campaign or developing permission based voice plan.



Thank You!

We have already been in discussion with some of our clients and would welcome sharing the learning their experience with you. Call us to learn more. Ventriloquist will continue to provide assistance and guide you through this new process. Please [Contact us](#) should you have any questions.

Sincerely,

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