

UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION

*In The Matter Of Telemarketing Rulemaking –*

FTC File No. R411001

COMMENTS OF CONVERGYS CORPORATION REGARDING THE  
COMMISSION’S NOTICE OF PROPOSED RULEMAKING TO AMEND THE  
TELEMARKETING SALES RULE

**I. Introduction**

Convergys Corporation, a member of the S&P 500 and the Forbes’ Platinum 400, provides award-winning billing and customer care products and services to leading companies in telecommunications, cable and broadband, technology, financial services and next-generation services in more than 30 countries around the world.

The company also offers integrated, outsourced, employee care services to leading companies across a broad range of industries. Convergys fosters relationships between its clients and their customers, through the use of world-class resources, software, and expertise. Each day, Convergys software produces more than 1.3 million individual bills, supporting more than 100 million subscribers. At the same time, the company’s customer service professionals initiate and receive more than 1.2 million separate customer interactions via our multi-channel contact centers, including live agent and Web-based communications.

Headquartered in Cincinnati, Ohio, USA, Convergys employs nearly 44,000 people in our integrated contact centers, data centers and other offices in the United States, Europe, Asia/Pacific, Canada, Latin America and Israel.

Convergys serves as a virtual extension of its clients' businesses, providing them with innovative, billing and customer management programs that optimize their customer relationships for a competitive advantage. Convergys' world-class billing and customer care software is available to clients in either a licensed, build-operate-transfer (BOT) or outsourced arrangement. Our component-based, three-tiered family of next-generation billing software solutions features carrier-grade application modules, application suites, and complete end-to-end products for the following industries:

- Wireless
- Cable/Broadband/DBS
- xSPs and Next-Generation Service Providers.

Additionally, we offer comprehensive customer care and contact center services, including:

- Customer acquisition and retention
- Web-enabled customer service
- Employee care services
- Technical support
- Market research and customer value management
- Database marketing services
- Interactive customer services.

We are writing to offer comments regarding the proposed revisions to the Telemarketing Sales Rule.

A significant number of Convergys' aforementioned consumer transactions include what could be characterized as having a telemarketing component. The vast majority of the company's customer interactions are in the form of inbound calls and electronic transmissions from consumers. As such, the stability and continued growth of this piece of our business is critically dependent upon the continued viability of telemarketing.

Imposing new regulatory restrictions that could burden the ability of companies such as Convergys to effectively and cost efficiently conduct these activities would have a negative economic impact on the industry.

We support the recent efforts of the FTC to investigate and eliminate fraud in the industry. We also support the continued implementation of the Telemarketing Sales Rule (TSR) that is currently in effect. Convergys believes that the current TSR represents an approach to addressing the concerns of regulators and/or consumers that is reasonably balanced with the need for companies to engage in sales transactions with potential, existing and prior customers.

Convergys is a member of the Direct Marketing Association, the Electronic Retailing Association, and the American Teleservices Association. The company has been highly involved with each organization for a number of years and collaborated with each on the development of industry standard practices. As a member in such standing, Convergys supports the comments that these organizations will file on these matters with the Commission.

As noted, Convergys does not support every proposed revision of the TSR. The proposals place burdensome restrictions on companies such as Convergys that have ethically used the telephone as a legitimate sales and marketing tool. Further, we believe that the proposed rules are unnecessary to achieve the Commission's stated objectives.

For the reasons introduced and detailed below, we are concerned that the FTC's attempts will not curtail the abusive and deceptive telemarketing practices of a few bad actors in the industry. Instead, the amendments will penalize the business practices of reputable companies and will have a significant impact on Convergys' ability to continue to conduct ethical and legal telemarketing programs.

Clearly, the scope of the FTC's proposed changes are far-reaching and would result in higher costs for companies engaged in telemarketing activities. As a consequence, companies may be forced to pass along some of the costs to consumers if the proposals are enacted. Considering the significant impact of the proposed rules would have on the industry, Convergys is eager to learn more about and study the results of the Commission's economic impact study that the Commission plans to complete prior to considering changes in the TSR.

In particular, Convergys comments on the following proposals:

**(1) Creation of a National Do-Not-Call Registry**

The Commission has proposed the creation of a national Do-Not-Call (DNC) list without providing details regarding the manner in which the list would be administered, how the list would be funded or without consideration of the economic burden that the list would place on telemarketers.

It is important to note that the industry has been successful in its attempts to provide consumers with a one-stop service to remove their names from all calling lists. The Direct Marketing Association's Telephone Preference Service, for example, offers a simple, free nationwide DNC system. In addition, many states already have moved to address any perceived loopholes in the existing DNC framework. More than twenty (20) states have enacted DNC list statutes that apply to both intrastate and interstate calls to consumers in those states. In addition, as of this writing, another seventeen (17) state have introduced legislation calling for the creation of state-maintained lists (or mandating the use of the DMA's TPS).

Convergys has followed all appropriate federal and state telemarketing laws and honors consumer DNC requests. Convergys believes that the TPS, coupled with

the requirement that sellers honor specific DNC requests, provides an effective method for consumers to minimize the number of unwanted telephone solicitation calls received.

Convergys also is cognizant of the Commission's concerns regarding the current DNC enforcement mechanisms. We stand ready to further discuss the maintenance, funding and administration of a national DNC list.

However, we maintain that, if created, the national DNC list now proposed by the FTC should be the only one in existence and supplant other established efforts. To expect compliance with a FTC national DNC list *and* all other related initiatives would unduly burden those that use the telephone as a legitimate channel of communication with potential and existing customers. Without preemption from existing state statutes, the administrative costs associated with attempting to comply this myriad of state requirements would be significant.

## **(2) Predictive Dialers**

Many companies use predictive dialing devices to make operation of their business more cost effective by increasing productivity. Increased efficiency in marketing products and services through the use of predictive dialers helps to reduce costs and ultimately, save consumers money. Any regulation that would render this technology unusable would result in significant cost increases to business and, by extension, the consumer.

As a member of the Direct Marketing Association (DMA), Convergys abides by and maintains a programmed abandonment rate (the rate at which calls are disconnected prior to the caller initiating a conversation with the called person) of less than five percent, as called for under DMA guidelines.

Convergys acknowledges that the efficiencies and increased productivity achieved through the use of predictive dialers need to be balanced against consumer objectives to abandoned calls. As such, Convergys believes that telemarketers should use the lowest possible abandonment rate commensurate with effective marketing, and is supportive of established industry guidelines that recommend an abandonment rate as close as possible to zero.

As an alternative to banning the use of predictive dialing systems, Convergys believes that the abandonment rate should be limited to a newly determined industry standard that is as close as possible to zero.

Convergys believes that a mandatory zero abandonment rate would have a significant economic impact on telemarketers and, in light of the widespread use of predictive dialers by entities not subject to the TSR, would do little to reduce the number of abandon calls received by consumers. Accordingly, a mandatory zero abandonment rate should not be imposed.

To the extent that the Commission seeks instead to mandate an acceptable abandonment rate above zero, consideration must be given to time period during which the abandonment rate will be measured and the definition of what constitutes an abandoned call. Compliance with a zero abandonment rate would result in fewer calls being placed during a particular time period and, thus, would directly reduce the revenues earned by telemarketers.

### **(3) Definition of Outbound Call**

The Commission has proposed revising the definition of an “outbound telephone call” in an effort to ensure that consumers know when they are holding discussions with separate sellers (an “upsell”); the identity of the second seller; and that the purpose of the second solicitation is to solicit a separate purchase.

Convergys acknowledges the Commission's desire to include upsells within the TSR. Further, the company supports the position that, in instances where solicitations are made during a single telephone call on behalf of multiple unaffiliated entities, there should be a clear disclosure to the consumer that the second solicitation is for a second product or service and that the purpose of the second solicitation is to solicit a purchase. Convergys also agrees that the material terms and conditions of the second solicitation should be clearly disclosed.

As mentioned earlier in these Comments, the majority of Convergys' customer contacts are inbound. In this context, the consumer is making the contact and knows that it relates to purchasing products or services from a particular company or organization. There may be instances when certain disclosures are made at the beginning of an inbound call. However, the Commission should not mandate that those same disclosures be repeated during the upsell phase of the same call when the caller remains on the line with one customer service agent. In our view, repeating the same disclosure(s) would be an annoyance to consumers.

Convergys can find no reason to redefine a call as an outbound call simply because the call may include the offer of products or services from more than one seller. Requiring that customer service agents repeat certain disclosures, especially those designed to clarify that the call is to sell products or services, will result in increased costs for marketers and provide no value to consumers. As it relates to outbound calls, the consumer already has been informed that the call is to sell products or services. Requiring these same disclosures to be repeated will serve to exasperate consumers and increase costs for legitimate marketers.

Convergys believes that TSR language should be revised to clarify that it applies only to telephone calls transferred to a telemarketer other than the original

telemarketer “for purposes of making a subsequent solicitation on behalf of a separate seller or charitable organization.”

Convergys has been active in the industry’s efforts to self-regulate activities and participated in the creation of the Electronic Retailing Association’s Advance Consent Guidelines. These Guidelines already have, and will continue to have, a substantial impact on curbing many of the abuses which gave rise to the Commission’s NPRM to alter the TSR.

### **Summary Statement**

Convergys Corporation respects the time the Commission has invested in studying these issues and its commitment to modifying the Telemarketing Sales Rule. We urge the Commission to look at the potentially negative economic impact that these proposals will have on the communities in which we have facilities and the economy as a whole.

Thank you for your consideration. We remain available to assist the Commission on these matters.

Respectfully Submitted:



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