

Before the
Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580

In the Matter of)
)
Rules and Regulations Implementing the) TSR Prerecorded Call Prohibition and Call
Telemarketing Sales Rule) Abandonment Standard Modification,
) Project No. R411001
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)

The Heritage Company, located at 2402 Wildwood Avenue, Suite 500, Sherwood, Arkansas 72120, hereby submits comments to the Federal Trade Commission (FTC) on the matter of the TSR Prerecorded Call Prohibition and Call Abandonment Standard Modification, Project No. R411001.

1. We SUPPORT the petition by The Direct Marketing Association (DMA) and the American Teleservices Association (ATA) to amend the abandoned call safe harbor requirements to a three percent per campaign per 30 days standard for the reasons outlined below.
2. As the petitioners have made clear, and our previous comments on this matter have held, the current safe harbor requirements for abandoned calls are burdensome on the teleservices industry without producing significant benefit for telephone consumers in this area. We have always recognized the annoyance factor for consumers inherent in the use of predictive dialers, and striven to balance that factor with the efficiency derived from the use of this tool. For that reason, we implemented low abandonment rates before the rules were revised in 2002-03.
 - a. The calls made by Heritage are primarily on behalf of nonprofit organizations. As such, the FTC has the authority to regulate such calls under the USA PATRIOT Act of 2001. We have gratefully noted that the Revised TSR as implemented in 2003 exempted calls on behalf of nonprofits from the National Do Not Call Registry requirements. However, some of the other aspects of the rule, such as the abandoned call requirements, have had a negative impact on our ability to efficiently raise funds for nonprofit organizations.
 - b. The standards for abandoned call rates promulgated by the FTC and the Federal Communications Commission (FCC) in 2003 differed in their requirements. Under the framework established by the USA PATRIOT Act, our calls have been governed by the FTC rules. These rules have required that we track abandoned calls by campaign and by day, to ensure that the three percent per campaign per day standards are adhered to properly. This requirement has created a significant technological challenge, requiring that we expend time, labor, and incur additional equipment costs in order to comply with the rules. This burden increases our cost of operation, negatively affecting the proportion of raised funds received by our nonprofit clients.

- c. The three percent per campaign per day standard requires our systems to track all calling campaigns individually, which is burdensome with over 180 client agencies. In order to comply with the rule in all campaigns, our software must be programmed to err on the side of caution to avoid exceeding three percent abandonment rates on any one of them.
- d. The capability of measuring, tracking, and adjusting abandonment rates would allow our dialer system to be able to make smoother, longer-term planning possible for staffing and allow for greater efficiency—precisely what the technology was created to deliver.
- e. The intent of supporting a move to a three percent per campaign per 30 days standard is not to exceed the three percent standard on certain customer (or donor, in our case) sets. Rather, it is to enjoy the greater efficiencies of being able to use reach rates during various days of the month that allow for greater penetration of donor lists without expending additional man-hours or unnecessarily abandoning more calls. The longer time period involved allows for greater flexibility within a campaign, and will deliver greater efficiency, without sacrificing consumer protection.
- f. The campaigns we conduct for our nonprofit partners are diverse in their size and requirements. Some nonprofits have large donor bases, and other require more heavily on building donor bases to support their future operations. By their nature, the organizations who are building a donor base must gain new donors through our calls to consumers who have never supported the organization previously. These calling campaigns are far more costly than those to previous donors, since it takes much more time and more calls to more people to raise funds—that is to say, it may take ten calls to non-donors to gain one pledge of support while calling previous donors may result in a pledge in three of every four calls. Thus, the acquisition calling—calls to non-donors—is more costly. It is in this area that a change in these rules would have the most benefit to our nonprofit partners, by allowing us to take advantage of greater contact opportunities during certain days of each month.
- g. Regarding the concerns about setting abandonment rates higher for some customers than for others (“donors” or “prospective donors”, in our lexicon), the “per campaign” stipulation in the rule prohibits such efforts. However, even if the Commission were to adopt the FCC’s rule and just address all calls over a 30 day period, it would still not be to our benefit or that of our clients to do so. There are no donor groups whom we deem of more or less value here, though some are more costly than others to call given their giving history. Put simply, we would not want to set an abandonment rate above three percent for one “lower-value” group and one below three percent for a “higher value” group because *all* of our donor groups are vital to the success of our campaigns. Nonprofits need both aspects of telefundraising—gaining new pledges from previous donors and acquiring pledges from new donors—to survive and grow their programs.

- h. Setting the rule by campaign by day by definition decreases the number of calls that the dialer software must address to comply with the current rules. The small number of calls and the compressed time period involved makes the system run conservatively—well below the three percent threshold—throughout the calling day. This approach means that we end each day well below the three percent rate in every campaign, since there is never any room or time to make up for a singly hour in which calls might approach that threshold too closely. Being able to “make up” for an occasional hour when abandonment rates exceeded the three percent level later in the month would allow greater flexibility throughout each calling day. Notably, the net effect on consumers would be nil, since we would still be tracking and managing abandonment rates closely in order to comply with the rules. The 30 day timeframe would remove the necessity of managing the abandonment rate by the hour, which is essentially what the per-day rule requires us to do, and would provide greater efficiency (either in cost savings or increased fundraising capacity) in our operations, which would in turn benefit the charities for whom we make these calls.
3. In the interests of full disclosure, it should be noted that we are members in good standing of both The Direct Marketing Association and the American Teleservices Association. That membership does not drive these comments; it reflects the need for such professional associations in safeguarding the interests of the teleservices industry, always with the needs of the American consumer foremost in the approaches to business that we undertake.
4. As noted previously, the net effect upon consumers by this rule change would be nil. There would still be rules in place to ensure that no more than three percent of all calls made would be abandoned, in keeping with the concerns shared regarding this petition. The rule change would simply allow businesses such as ours to operate more efficiently while still minimizing the consumer concerns with abandoned calls.
5. We appreciate the opportunity to publicly submit comments on these important rules affecting the teleservices industry.

For the company,

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