



November 13, 2014

VIA ELECTRONIC DELIVERY AND HAND DELIVERY

Federal Trade Commission
Office of the Secretary
Constitution Center
400 7th Street, S.W.
5th Floor
Suite 5610 (Annex B)
Washington, D.C. 20024

Re: Telemarketing Sales Rule Regulatory Review, 16 C.F.R. Part 310
Project Number R411001

Gentlemen and Ladies:

We are writing to the Federal Trade Commission ("Commission") on behalf of the constituent members of the American Resort Development Association ("ARDA") to voice our concerns regarding the regulatory review of the Telemarketing Sales Rule (the "TSR" or the "Rule") 16 C.F.R. Part 310, as published in the Federal Register on August 11, 2014 at 79 Federal Register 154. ARDA members are committed to protecting the users of its products from being victimized by unscrupulous telemarketers.

About ARDA

By way of background, ARDA is the Washington, D.C. based professional trade association representing the interests of developers of timeshare, fractional and other vacation real estate products. Established in 1969, ARDA's diverse membership includes over 1,000 member companies, ranging from small privately held firms to publicly-traded companies, and including major hotel and entertainment brands. Timeshare is a vital segment of the hospitality and tourism industry. As of the end of 2013, there were 1,540 vacation ownership resorts operating in the United States. Of these, 1,023 resorts or 66% are located in ten (10) states. Florida, California and South Carolina have the most resorts, representing 39% of all U.S. timeshare resorts. These statistics are taken from the 2014 *State of the Vacation Timeshare Industry: United States Study* prepared by Ernst & Young which provided an overview of important

summary information on the U.S. timeshare industry for the year 2013 (the "2013 Timeshare Industry Study") and is attached hereto as Exhibit 1. Among the branded companies who are ARDA members are the following: Hilton Grand Vacations, Holiday Inn Club Vacations, Hyatt Residence Club, Marriott Vacations Worldwide, Starwood Vacation Ownership, Wyndham Worldwide, and others.

Our members have instituted policies and procedures designed to monitor for potential fraud-induced transactions, to alert authorities when such transactions are detected and, if those transactions involve our retail point of sale agents, to take corrective action against such agents. In this regard, we strongly support the Commission's efforts to identify fraudulent telemarketers and to eliminate them from the industry, give consumers added privacy protections and defenses against unscrupulous telemarketers, and help consumers tell the difference between fraudulent and legitimate telemarketing. However, disruptive and perhaps unintended adverse consequences of the Rule for consumers and industry alike are a major concern to ARDA. Further, advancements in technology including cell phones, text messaging, etc. makes certain of the requirements of the TSR outdated, while other potential changes such as requiring any additional record keeping for calls would increase costs for ARDA members without any apparent benefit to consumers.

The following is a list of certain questions raised by the Commission and our members' responses to those questions. We have not attempted to answer each question raised by the Commission, only the ones of significant interest to our members.

Item #	Question	Collective Response
1(a)	Have changes in technology, industry structure, or economic conditions affected the need for or effectiveness of any parts of the Rule?	Cellular phones and dialing equipment have vastly changed the landscape and the Rule has to be updated to keep up with those changes. Advances in technology have made it easier to control who you call and by what methods. Call systems are far more advanced now and the settings can be altered to make calls more consumer friendly.
1(c)	Does the Rule include any provision that is no longer necessary? If so which ones?	Yes – the prohibition on calling cellular phones using a predictive dialer unless “express written permission” has been granted. As discussed below, (a) the definition of predictive dialer as set forth in FTC guidelines needs to be codified in order to exclude calls made with human intervention, and (b) the new “express written permission” requirement should revert to the previous and more reasonable “express permission” requirement.

Item #	Question	Collective Response
1(d)	Does the Rule include any provision that fails to serve its intended purpose? If so, which ones?	<p>Yes - the prohibition on leaving pre-recorded messages.</p> <p>So long as the pre-recorded message is made only to a landline, provides necessary disclosures and is not made repeatedly, there is no harm to a consumer and in fact is more beneficial than repeatedly calling the customer who doesn't want to answer their phone. As well, restrictions on abandonment intended to prevent dead air calls because persons were frightened does not solve the problem, because dead air can occur for other reasons.</p>
1(e)	Does the Rule include any provision imposing unnecessary costs and burdens on businesses, including small businesses?	<p>Yes - the restriction on calling existing customers on their cellular phone without express written permission. Further, the "established business relationship" (EBR) definition under the existing Rule allows formation of an EBR based on a single purchase, rental, lease, inquiry or application regarding goods or services within the prescribed timeframes, but does not consider EBRs that are maintained between sellers and consumers as part of an ongoing relationship concerning their product or service – and the corresponding decreased risk of fraudulent or unscrupulous telemarketing during the course of those relationships.</p> <p>ARDA's members include timeshare resorts, private residence clubs, land developers, resort communities and vacation exchange networks. ARDA's members make calls to their consumers concerning ongoing maintenance or support for their original product or service, regarding the status of their memberships, or for other related services.</p> <p>ARDA's members maintain relationships with their consumers through multiple communications, channels and media – such that their consumers are familiar with the seller as an entity and have been regularly exposed to</p>

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		<p>disclosures concerning seller's products and services.</p> <p>The Rule makes no distinction in terms of the reduced risk associated with these long-term seller and consumer relationships, but substantially increases the costs for such sellers.</p> <p>One of our members estimated that costs per contact to comply with call abandonment provisions increased almost 50%, and idle rates for call representatives increased by 25%, with little corresponding reduction of risk or impact to consumers.</p> <p>Another one of our members has represented that the requirements and restrictions associated with the National DNC Registry have resulted in an approximately 70% decrease in outbound telemarketing operations, including a decrease in related flexible jobs that are primarily held by part-time workers, students, and single parents, since the Registry's inception.</p> <p>ARDA's members support making a distinction within the Rule for longstanding seller-consumer relationships, and corresponding exemptions from provisions such as the call abandonment requirements.</p> <p>Along those lines, our members believe that the restrictions on calling existing customers on their cellular phones without their express written consent should be eliminated given that a large percentage of customers lack land lines and now only own a cellular phone. Given changes in technology, consideration should also be given to allowing customers to be contacted via SMS text messaging, and via ring-less voicemail (whereby voice messages are inserted into the mobile phone user's voice mail without their mobile phone ringing).</p>

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1(g)	Have the costs or benefits of the Rule dissipated over time?	<p>Significant costs were required when the Rule was first implemented, with minor cost increases over the years. However, the change in cellular phone dialing requiring “express written permission” has significantly increased costs again; where an existing customer has provided their cellular number, “express permission” to be contacted should be deemed given and should be deemed as satisfactory consent – i.e., the new higher standard of “express <u>written</u> permission” should not be required and is a threshold that, in our view, is no longer reasonable given proliferation of cellular phones.</p> <p>Further, since cellular phones are now so prevalent and used by so many customers as their primary phone, automated dialing should be permitted to cellular phone numbers where the customer has provided such “express permission”. Continuing the requirement that cellular numbers be called manually is an unnecessary ongoing cost and inefficiency for our members.</p> <p>Also, in our view, the current predictive dialer definition needs to be adjusted in order to specifically exclude calls made with human intervention from equipment that is otherwise capable of technically acting as a predictive dialer. Currently, this distinction is contemplated by FTC guidelines, but it is not law and currently states are not required to follow this distinction.</p>
2.	What impact, if any, has the Rule had on consumers?	<p>Consumers are confused in that they think once they put their number on the Do Not Call list, no one can call them. As a result, they fail to request to be added to a specific company's do no call list, and may instead submit complaints about the company calling them when such company may have had an existing business relationship but are unaware of the customer's desire not to receive any calls.</p>

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2(a)	What significant benefits has the Rule provided to consumers? What evidence supports the asserted benefits?	Greater awareness of consumer rights to request not to be called. Number of phone numbers added to National Registry.
2(e)	What changes, if any, should be made to the Rule to increase the benefits to consumers? How would these changes affect the compliance costs or burdens the Rule imposes on businesses, including small businesses?	Limit the number of calls (or pre-recorded messages) to a single phone number over a specified period of time. Require leaving messages when contacting guests on landlines. Allow calls to cellular phones to existing business customers, but restrict to only calling such numbers if the person is not able to be reached at a landline after a certain number of attempts. It would force telemarketers to limit call patterns to acceptable levels, but provide some flexibility in calling cell numbers of existing business customers when such customers can not be reached by other means.
3	What impact, if any, has the Rule had on entities that must comply with it?	Increased costs, less efficiency and more litigation.
3(c)	What changes, if any, should be made to the Rule to minimize any burden or cost imposed on the industry or individual businesses, including small businesses? How would these changes affect the benefits provided by the Rule to consumers or the industry:	Relax rule on using autodialer machines and permit use with cellular phones.
5	Does the Rule overlap or conflict with other federal, state, or local laws or regulations? If so, how do they overlap or conflict? What evidence supports any such asserted overlap or conflict. If overlaps or conflicts exist, how do telemarketers address them? Should the Rule be modified to address these asserted overlaps or conflicts? If so, why, and how? If not, why not?	Conflicts with FCC rule as it pertains to dialing equipment. As well, New York follows the rule as it pertains to DNC, but does not adhere to FTC guidance or interpretation. Many states have collections laws that cover the same actions as those covered by the Rule. There is also an unnecessary duplication of regulations which creates ongoing compliance expense.
5(b)	Are there any gaps where no federal, state, or local government law or regulation has addressed a particular abuse?	There is no guidance on the number of calls that would be characterized as abusive (except in a few states).

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8	<p>Section 310.4(a)(7) generally prohibits sellers and telemarketers from submitting billing information for payment in any transaction without first obtaining the express informed consent of the customer or donor to be charged for the goods or services or charitable donation and to be charged using an identified account.</p> <p>(b) What changes, if any, should be made to this section?</p>	<p>ARDA does not support additional requirements on sellers and telemarketers related to submitting billing information for payment of different transactions within the same call (e.g., upsells, changes in or additional reservations) if the consumer has already provided a method of payment in that call. It should be sufficient for the seller or telemarketer to simply inquire whether the consumer wishes to use the same method of payment they have otherwise provided in the call. If the consumer wishes to use a different form of payment, the consumer would notify the seller or telemarketer appropriately.</p>
11	<p>Should the recordkeeping provisions be expanded to include a requirement that sellers and/or telemarketers retain records of the telemarketing calls they have placed? What specific costs and burdens would such a requirement impose on businesses, including small businesses?</p>	<p>To the extent the Commission promulgates a rule requiring sellers and telemarketers to maintain what would be duplicate records of calls, particularly for any length of time, such requirements would impose an additional burden on businesses, in particular small businesses. Telephone carriers are the primary custodian of these records and are in a better position to have equipment and infrastructure in place to support maintenance of these records. Some businesses may have unilaterally decided to maintain calling records for their own convenience, quality assurance, and related purposes. However, the Commission should take into consideration that requiring sellers/telemarketers to maintain calling records for any significant length of time increases storage and maintenance costs on these parties. If sellers or telemarketers decide to maintain such records, the Commission should not impose lengthy maintenance requirements, but also should not restrict sellers or telemarketers from maintaining such records for a time period these parties have determined is reasonable to them.</p>
24	<p>What technological innovations have been implemented by telemarketers over the past ten years, and what impact have these innovations had on:</p>	<p>Advances in call system technology has made it easier for members to increase their reach and maximize efficiency, all while providing a better experience for consumers.</p>

Item #	Question	Collective Response
26	How have the following technological developments impacted telemarketing? How have they impacted consumers?	See specific responses below.
26(a)	The use of computer databases of consumer information?	Allows companies to tailor offerings to consumers based on consumer choice and preferences. This also allows our members to reach the maximum number of contacts.
26(b)	Predictive dialer?	Allows companies to keep exact records of calls, offers, agents, etc.
27	What technology is available to consumers to screen or deflect unwanted calls from telemarketers (e.g., answering machines, Caller ID, anonymous call rejection, privacy managers, call filtering systems)? Are interception technologies available and affordable? What impact are such innovations having on telemarketing or telemarketers? How will these technologies that intercept calls shape the future of telemarketing? What consumer habits or concerns (such as the concern about security if an unanswered call may make it appear that the house is empty) may reduce the willingness of consumers to rely on this technology?	Caller ID allows consumers to go to the Internet and type a number in. They see a list of other consumers who have done the same thing and assume a fraud is being perpetrated. If the company were required to leave a message, the consumer would not have to rely upon such uncontrolled sites for what is often incorrect and inaccurate information. Although less calls are answered by consumers, the calls that are answered tend to be more positive and fruitful for our members.

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Conclusion

In conclusion, we respectfully request that the Commission consider each of ARDA's comments above in consideration of any proposed changes to the Rule for the reasons stated.

Sincerely,

Sandra Yartin DePoy
Vice President, Federal & Regulatory Affairs
American Resort Development Association

EXHIBIT 1

2013 Timeshare Industry Study

2013 EXECUTIVE
SUMMARY



STATE *of the*
VACATION TIMESHARE INDUSTRY:
United States Study

Prepared by:  **ERNST & YOUNG**
Quality In Everything We Do

2013 EDITION

STATE of the VACATION TIMESHARE INDUSTRY: United States Study

This study is an estimate of key metrics that provide an overview of the vacation timeshare industry in the United States. It is not a comment on any individual company, whose performance may vary from the information included in this study.

EXECUTIVE SUMMARY

Industry Overview

There were 1,551 timeshare resorts in the United States in 2012, representing about 189,200 units for an average resort size of 122 units. There were 8.3 million intervals owned. Among these intervals, 86% were owned by resort owners (consumer owners or other purchasers), while 12% were under the ownership of developers.

Key performance metrics 2012

Metric	2012
Sales volume	\$6.9 billion
Number of timeshare intervals sold	366,155
Sales price per interval	\$18,723
Points equivalent	\$24,710
Weeks	\$13,267
Occupancy	76.9%
Average maintenance fee per interval	\$822

Maintenance fee delinquencies

Status	Percent of maintenance fee accounts
Current (fewer than 31 days delinquent)	87%
31-60 days delinquent	0%
61-90 days delinquent	0%
91-120 days delinquent	1%
More than 120 days delinquent	12%
Total	100%

Percent of 229 respondents — percentages may not add due to rounding

There were about 9.6 million nights rented in 2012, at an average price of \$163 per night. This translates to approximately \$1.6 billion in rental revenue for the timeshare industry last year.

Industry Size

Measure	2012
Resorts	1,551
Units	189,222
Average resort size	122 units
Intervals owned	8.3 million
Total units including lock-offs	242,430

Industry Health

Year 2012 sales volume totaled \$6.9 billion, increasing by 6% from 2011. There were about 366,200 timeshare intervals sold at an average price of \$18,700, increases of 3% and 2%, respectively, from 2011.

The weighted average maintenance fee charged per interval was \$822, up by about 5% from 2011. The average was \$542 for studios, \$656 for one bedroom units, and \$921 for units with two or more bedrooms.

About 87% of maintenance fee accounts were current or fewer than 31 days delinquent in 2012.

Average occupancy was 77% in 2012. By comparison, hotel occupancy was 61%¹ in 2012, according to Smith Travel Research. Timeshare occupancy includes about 59% of occupants who were either owners or exchange guests and 18% who were renters and/or marketing guests.

Rental revenue

Metric	2012
Total rental revenue	\$1.6 billion
Total nights rented	9.6 million
Average rental price per night	\$163

Based on 418 respondents

Industry Segments

Having a general picture of the overall industry's size and health, the next step is to segment the resorts by important characteristics. These include resort size, sales volume, resort type, geographic region, and sales price. For each of these segments, the report presents five important industry measures: average resort size, sales volume, interval price, occupancy, and maintenance fees. The following observations emerged:

- Sales volume, occupancy and maintenance fees tended to be highest at resorts with 100 or more units in 2012.
- The most common resort type in the U.S. timeshare industry is the beach resort. Theme park and golf resorts tend to be the largest; island resorts have the highest occupancy and maintenance fees.
- Florida continues to have the most resorts, and resorts there tend to be much larger than in most other regions. Hawaiian resorts have the highest average sales price and occupancy rates.
- Occupancy is much higher for resorts priced at \$20,000 and above compared to those priced lower than \$20,000. Almost half of total sales occurred among intervals priced between \$20,000 and \$29,999. Maintenance fees tend to increase with sales price.

Performance by geographic region

Region	Percent of resorts	Average size (# units)	Total sales volume (\$B)	Sales price per interval	Average occupancy	Average maintenance fees per interval
Florida	24%	212	\$2.7	\$18,170	75.4%	\$759
California	9%	117	\$0.4	\$17,269	83.7%	\$781
S. Carolina	7%	119	\$0.5	\$15,759	79.7%	\$708
Hawaii	6%	116	\$0.6	\$29,290	87.9%	\$1,019
Mountain/Pacific	20%	99	\$0.6	\$16,835	77.1%	\$795
Northeast	11%	88	\$0.4	\$17,244	64.7%	\$606
South Central	9%	138	\$0.8	\$11,273	69.6%	\$675
South Atlantic	8%	102	\$0.4	\$15,867	65.2%	\$640
Midwest	7%	114	\$0.5	\$8,434	65.8%	\$662
Overall	100%	122	\$6.9	\$18,723	76.9%	\$822

Percent of 1,551 resorts — percentages may not add due to rounding

Sold Out Resorts

Among resorts that indicated that they were not in-sales, 254 resorts provided data on the management of sold out resorts. This information focused on two main topics — special assessments and reserve funds.

About 15% of sold out resorts reported having a special assessment in 2012. Nearly all respondents reported that the assessment was related to a planned refurbishment. Only a handful noted that the assessment was related to unanticipated concerns such as a natural disaster or some failure of capital assets.

The median reserve balance held by resorts is \$14,300 per unit. Almost a quarter of respondents conduct a reserve study every year — 71% conduct a reserve study at least every three years. About 63% of resorts conducted a reserve study in 2012 — 92% of resorts had conducted one in the past three years. On average, resorts reported that 18% of billed maintenance fees are contributed to reserve funding. About 85% of respondents indicated that their contributions to reserves from maintenance fees meet or exceed the levels recommended in the most recent reserve study. Among those resorts whose contributions are below recommended amounts, maintenance fee delinquencies are the most common cause.

Industry Outlook

In 2012, the timeshare industry began to show substantial sales growth for the first time since the most recent economic downturn. Among respondents providing data in both years, this growth was 9% — the highest level since 2006. Average sales price among those providing data in both years increased by more than 5% and occupancy held steady.

Respondents reported an increased interest in new construction, particularly starting in 2014. Respondents expect to build around 1,400 units in 2013 — about the same as the 1,400 units expected at this time last year for 2012. However, they estimate another 7,900 new units in 2014 and beyond — this compares to only 1,900 expected at this time last year for 2013 and beyond. Also, while only 5 new resorts are planned for construction in 2013, another 63 are expected in 2014 and beyond. Resort and unit construction slowed significantly in the past several years as the industry worked through excess inventory created by the economic downturn. This expected increase in construction activity will be worth watching in the next several years to help gauge a potential increase in demand for timeshare product.

Methodology

Ernst & Young conducted a survey of 1,551 recognized timeshare resorts to provide an overview of the state of the timeshare industry in the U.S. Responses were received from 709 resorts, representing a 43% response rate.

Use of Information Provided by AIF:

The information provided by the ARDA International Foundation is intended to give the reader general information regarding the industry and it does not constitute legal or other professional advice. The information should not be relied upon in making any determinations about a specific matter or issue. If you require counsel on a specific matter or issue, please contact the appropriate professional.

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ARDA International Foundation

1201 15th Street NW, Suite 400

Washington, DC 20005

(202) 371-6700

(202) 289-8544 fax

www.arda.org