

Selected RFC questions have been addressed and their responses have been bulleted to match the appropriate question identifiers.

A1. We need the TSR, and its enforcement, more than ever in an economy so distressed that it appears simpler for some to make a dollar dishonestly than to get a real job or run a responsible business.

A1a. It's no secret that cheap VOIP and Caller ID spoofing have become effective tools of concealment for scofflaws, frustrating the common citizen's ability to report or sue violators.

A2e. This will be off topic from the theme of the comment request. The math used to determine call abandonment "safe harbor" has long confused me. Covered callers must "ring either four times or for 15 seconds before disconnecting", periods which to me are mutually exclusive. I count a ring and pause as taking 05 seconds, hence three rings occur within 15 seconds, and four rings within 20 seconds. Are we saying that a partial Ring #4 counts? The ring threshold needs precision and adjustment for Caller ID, which needs one full ring to transmit, thus limiting the time a call recipient has between hearing the first ring and deciding how to respond. I might suggest resetting the window to five rings or 25 seconds.

Also, from where I sit, failing to use an available message recorder is pretty much the same as call abandonment. This too should be factored in. It's been my consistent observation that predictive dialers used by certain bad actors will usually react in one of four ways when a human fails to answer:

- abandon before a human or machine could reasonably respond
- abandon at barely the minimum ring count the TSR mandates
- jump off line the instant a canned greeting is detected
- record a brief "dud" moment of silence

Clearly some junky callers rely on leaving messages, often deceptive, using either enticement or terror to prompt a response. Others are determined to remain a secret, placing such a premium on human response that they risk irritating the hell out of called parties with repeated "ring and run" events. Hardware message recorders typically can be set to respond within three to five rings, supporting my "ring five" abandonment threshold.

A3d. I have call records and recordings dating back ten years which demonstrate persistent and widespread lack of compliance. Telefrauds frequently and repeatedly breach the abandonment “safe harbor”, fail to transmit accurate Caller ID, place canned sales calls without prior permission, disrespect Do Not Call registries, and fail to make disclosures of business names and return phone numbers during their calls.

B7d. Telemarketing nests cannot all be trusted with privileged information and should not be passing around the keys to funding sources to all their “affiliate” friends without a very good reason, clear disclosure, and strong data security measures. Good luck finding all three conditions to be true.

B7e. I’m personally tired of holding my breath every time an “e-tailer” insists that I can’t do business without a customer account and collecting both a street and billing address, a phone number, and account numbers, when clearly it does not need all of those data to process a given order. The idea is sold as a “convenience” for future orders, which is quite presumptuous and facilitates another possible data privacy leak. The Rule should impose a consent requirement for such data retention but also prohibit that retention as a condition of placing orders.

B7e-ii. I strongly suspect my rate of illegal sales calls spiked after first doing business with Amazon this year, if that helps.

B7e-iii & iv. Some document working like an affidavit should be fine, as in “You gave consent on this date” Customers should absolutely have the power to change their minds later.

B7e-v. I don’t think it’s a stretch to apply the same protections when general or direct response advertising is involved, the latter being a field already cluttered with dubious and fraudulent offers.

B7e-vii. Grandfathering existing data is not going to stop all the bleeding and will give both careless and unwitting consumers a second chance to better secure their privileged data. Besides, you’ll see a mad rush to data-mine people in advance of the effective date of any such Rule amendment.

B8, B9. Upselling near the point of purchase is an obnoxious practice to begin with. The whole point is to severely limit the time a person has to consider an offer, prompting an impulse purchase without vetting the benefits, terms, or the source of the offer if it’s tacitly controlled by an affiliate. A “primary” seller, if you will, should not be handing off privileged customer data to “secondary” sellers at all in those moments. There is usually no reasonable way to evaluate the secondary seller’s commitment to

privacy or the security of the channel used to transmit privileged data.

B11. TCPA plaintiffs would benefit from companies keeping internal records. Even better, I would suggest submission of those records to a tightly secure neutral party not controlled by any part of the telemarketing industry. The neutral “clearing house” would handle data requests from qualified consumers and law enforcement without needing a court order. This is to eliminate any corporate whining about those records occupying their server space or flimsy objections to the use of “privileged business records” which coincidentally happen to disfavor TCPA defendants.

B12b. Laws for telemarketing to businesses become mudstuck in a home business context. A home business should be treated more like a “consumer” than a business out of deference to the overall home environment which lawbreakers disrupt, which otherwise enjoys many privacy rights. The same phone often handles both personal and business calls in a home business or in a home occupied by an independent consultant or freelancer. Independents and employees who rely on mobile phones to fulfill job obligations are also vulnerable, as their mobility could place them where illegal sales calls create excess burden if not physical hazard.

B12e. Why would you not want to throttle misleading behavior, regardless of which side first places a call? Negative option billing is a known form of consumer entrapment which frankly should be outlawed and not merely nibbled at with restrictions.

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