



DMA Alert for Marketers: Federal Requirements for Proper Use of Prerecorded Messages

There are some times when marketers may and some times when they may not send a prerecorded commercial message. Then, there are times marketers must send one. This alert simplifies the rules.

The DMA Teleservices Ethics Committee is asking all those doing business by phone to review this alert before engaging in any campaign using prerecorded messages. This alert reminds marketers of both the legal requirements and DMA ethical obligations for sending prerecorded messages.

It is important to note that there are different legal requirements for sending prerecorded sales messages depending on whether you fall within the jurisdiction of the Federal Communications Commission or the Federal Trade Commission. If you fall under both jurisdictions, then you should follow the most restrictive requirements. DMA members are required to follow all DMA Guidelines for Ethical Business Practice. Many states also have their own laws regarding the sending of prerecorded messages. This alert does not address those but you will also need to take them into account in planning any promotional campaign

The FCC's Telephone Consumer Protection Act (TCPA)

Marketers may not send prerecorded *sales* messages to:

- Prospects;
- Emergency phone lines;
- Patients in hospital rooms/nursing homes, etc.; or
- If there's a cost for the consumer to receive the call.

Marketers may send prerecorded *sales* messages if they meet any of the following conditions:

- There's an established business relationship with the consumer they are calling;

- The consumer has provided prior consent to receive these types of calls;
- It's to a business line, as long as it doesn't tie up two or more lines of a multi-line business at the same time;
- It's not a commercial call;
- It doesn't include or constitute a solicitation or advertisement;
- It's made by, or on behalf of, a tax-exempt non-profit organization; or
- It's for an emergency purpose.

For any of the above permitted uses, the marketer must include all of the following information:

- 1) seller's name, or person/entity initiating the call,
- 2) phone number for which the consumer can call back during normal business hours to ask questions or opt out, and
- 3) purpose of the call is for telemarketing.

Marketers must send recorded messages when abandoning calls:

Marketers must connect calls to live representatives within 2 seconds of the consumer's completed greeting. If the marketer does not make this connection, then the call is considered abandoned. (Marketers are permitted to abandon only 3% of answered calls within a 30-day period.)

For any abandoned calls, marketers must leave the consumer a recorded message that includes only:

- 1) the seller's name,
- 2) telephone number which the consumer can call back during normal business hours to ask questions or opt-out, and
- 3) states that the purpose of the call is for telemarketing.

Note: The recorded message cannot be a sales message. It must include only the 3 elements listed above.

The FTC's Telemarketing Sales Rule (TSR)

Under the TSR, marketers may not under any circumstance send prerecorded sales messages to either customers or prospects.***

However, marketers must deliver a recorded message whenever they abandon a call.

Calls are considered abandoned if the marketer does not connect the call to a live representative within 2 seconds of the consumer's completed greeting.

The FTC has a more restrictive “abandoned call” calculation than the FCC. Under FTC rules, marketers are permitted to abandon only 3%, per day, per calling campaign. In contrast, the FCC allows 3% of calls per campaign made in a 30-day period to be abandoned.

The FTC has similar disclosure requirements to the FCC, the marketer must leave the consumer a recorded message that includes only the:

- 1) seller’s name,
- 2) telephone number which the consumer can call back during normal business hours to ask questions or opt-out, and
- 3) purpose of the call – however, marketers do not have to use the words that the call is “for a telemarketing purpose.”

*****Please note that in November 2004, the FTC issued a notice of proposed rulemaking indicating that they would forbear enforcement action provided the marketer conforms with all of the proposed rules.**

DMA’s Guidelines for Ethical Business Practice **Article #48 - Use of Prerecorded Voice Messaging**

The DMA Teleservices Ethics Committee recently amended the Guidelines to include an article on proper use of prerecorded voice messaging. The articles states:

Prerecorded solicitations should include the name and telephone number of the seller, service bureau or customer service department where the consumer can call back during normal business hours to request not to receive future calls, ask questions or get service.

Marketers who use prerecorded voice messaging should not automatically terminate calls or provide misleading or inaccurate information when a live consumer answers the telephone.

For access to DMA’s entire *Guidelines for Ethical Business Practice*, please visit us online at: <http://www.the-dma.org/guidelines/ethicalguidelines.shtml>.

This alert is brought to you by
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