New Telemarketing Laws Are Impacting Outbound Strategies

by Chris Heide

Recent legislation has some outbound call centers focusing on new ways to connect with prospects.

Many outbound consumer telemarketing centers are currently rethinking their strategies. Amendments to the Federal Trade Commission's (FTC) Telemarketing Sales Rule (TSR) promise to change how these companies do business.

Among the more prominent features of the revised TSR is the establishment of a national "do not call" registry, which, according to the government's own estimates, could result in the removal of as much as 60 percent of American households from the marketplace. The registry is expected to be up and running by this summer. Once it is functional, it will be illegal for most telemarketers to call a number on the list. Telemarketers who do not honor the registry will be prosecuted and fined up to $11,000 per incident.

Other amendments to the TSR restrict call abandonment, crack down on unauthorized billing, and require telemarketers to transmit caller ID information.

The Other Side of the Coin

Private Citizen Inc., a Naperville, Ill.-based research firm, says telemarketers place 148 million calls a day. Other research says the average U.S. household gets two-to-three telemarketing calls each day. And the prevalence of fraudulent marketing calls is a serious concern: According to the National Fraud Information Center in Washington, D.C., U.S. consumers lose $40 billion a year to fraudulent telemarketers. The FBI estimates that there are 14,000 illegal sales operations bilking consumers in the United States every day.

Some Major Exceptions to the Rule

While amendments to the TSR will likely change the telemarketing landscape, not all telemarketers will be equally affected. There are four key exceptions to keep in mind:

1. The provisions apply to business-to-consumer and not, in most cases, business-to-business telemarketing efforts.

2. The TSR does not apply to certain activities such as telemarketing by banks, federal financial institutions, common carriers (phone companies and airlines), insurance companies, and non-profit and political organizations. Industry analysts note that banks and telephone companies are the two biggest users of telemarketing.

3. A telemarketer may call a consumer with whom it has an established business relationship for up to 18 months after the consumer's last purchase, delivery or payment – even if the consumer's number is on the national "do not call" registry. In addition, a company may call a consumer for up to three months after the consumer makes an inquiry or submits an application to the company. And if a consumer has given a company written permission, the company may call the consumer even if the consumer's number is on the national "do not call" registry.

4. Because the FTC only regulates business between states, a business will still be able to call consumers in that state. Note, however, that nearly 30 states have instituted their own "do not call" lists.

Some groups, such as privacy advocacy firm Junkbusters.com, are convinced there are too many loopholes in the new rules. Others are concerned that these new rules will severely hamper telemarketers and even cause some of them to go out of business.

The American Teleservices Association (ATA), based in Washington, D.C., represents teleservices providers, users, equipment suppliers and professionals. It suggests that millions of jobs are being put at risk by this legislation and predicts that the selection of goods and services available to consumers will be reduced while costs will increase.

In addition, the Direct Marketing Association, a New York City-based trade group representing the interests of database marketers, says this legislation will have an adverse impact on the nation's economy. In 2001, the organization says, consumers purchased $296 billion worth of goods and services via outbound telephone solicitations. The DMA also points out that complaints logged by the Federal Communications Commission (FCC), the FTC and states make up a small percentage of the total calls made. The FCC says that from January 1, 2000, through December 31, 2001, it had received approximately 11,000 complaints. According to the DMA, this number represents less than one-hundredth of 1 percent of telephone solicitation calls made during this two-year period.

Overcoming a Bad Rap

One doesn't need to travel far to find someone who is happy to criticize all telemarketing efforts in general. For example, nearly 50 percent of Californians recently polled said interruptions from telemarketers irked them more than sitting in traffic, doing their taxes or waiting in line at the Department of Motor Vehicles.

Much of this dissatisfaction was inevitable, says Barry Ross, cofounder of Ross & Ross International, a provider of sales tools, services and information for high-tech firms, and former president of the American Teleservices Association for northern California. "Very often, in business-to-consumer telemarketing, companies don't put the training in place – the marketing people don't provide the information the telemarketers really need, and the call center doesn't quite provide the coaching and management the agents need. The end result is that the people who are called are annoyed."

Better training for employees, Ross says, is one way for telemarketers to make the best of today's situation. And, he says, it makes better business sense: "Telemarketing is successful when companies contact people who have a very specific, targeted need – the one that you're calling about. When that happens, people will want to talk to you – or at least they'll be receptive. It's just better marketing."

A spokeswoman for telemarketing company DialAmerica agrees. DialAmerica has more than 80 dedicated call centers in 26 states. It places more than 250 million phone calls annually from 6,000 workstations. On average, the company employs more than 10,000 telephone sales representatives who carry on 4 million to 5 million conversations each week on behalf of the company's clients. She says the national "do not call" registry will help to keep their lists clean, ultimately resulting in better use of their agents' time.

"We're glad to be able to eliminate the names of people who aren't responsive to telemarketing," she says. "Frankly, we don't want to call people who don't want to be called."

Outbound Centers Move to Put Protective Measures In Place

Noreen Kaminski, vice president of quality assurance at DialAmerica, suggests that consumer telemarketing centers seek assistance and additional information from industry organizations such as the American Teleservices Association and the Direct Marketing Association.

Kaminski says that a key element in implementing and following up on the compliance process is to have a legislative/compliance department or team within each teleservice center to implement all of the necessary federal and state legislative requirements. This group should also ensure that staff are fully trained on the requirements and monitored for compliance. Having this infrastructure in place can significantly limit an organization's exposure to legal challenges by consumers and various state agencies.

Barry Ross agrees. Consumers are likely to misunderstand all the nuances of the new legislation, he says. "For example, many people will know they can ask to have their name removed from a telemarketing list, but they don't know how to do it effectively. They may make comments to the telemarketer like, 'I can't talk now,' or 'This isn't a good time,' and assume they won't receive any more calls. Then when the telemarketer calls back, they may lodge a complaint."

On the other hand, if the consumer clearly says, "I want my name removed from this call list," telemarketing agents should understand that the company has a legal obligation to grant the request. Unless telemarketers are properly trained, they may be leaving your company open for trouble, he says.

Using Inbound Calls As a Sales Opportunity

CyberRep, a McLean, Va.-based firm that provides customer care and CRM services, has taken another approach. According to Co-founder Douglas E. Palley, it has moved to eliminate its outbound services and focus on its inbound call centers – and use inbound calls as a sales opportunity. Although Palley is no longer directly connected with CyberRep (it was recently acquired by Affiliated Computer Services), he believes this change in strategy is the wave of the future.

Will this new approach work? Ross believes it will. "The new rules will certainly reduce outbound telemarketing efforts," he says. "And a new focus on making better use of inbound calls should be a win-win for everyone." But inbound staff will need additional training, as well. Agents will need to know how to:

- Upsell during customer service calls when appropriate (e.g., angry callers are not good prospects).
- Learn and use this simple phrase: "What else can I help you with?"
- Gather email addresses during inbound calls. Email will become even more important in the future.
- Insert a gift or coupon in change-of-address mailings.
- Send a post-problem followup gift or coupon and include an offer.
- Find out why a customer didn't like the product. Complaint calls provide an opportunity to find out what the customer disliked – information that could provide an opportunity to sell the person a more satisfactory product.

At the same time, Ross says, outbound telemarketing centers will need to explore further ways to get customers' permission to call them. Down the road, he says, this could lead to adding a direct mail marketing component to their offerings.

A Few Silver Linings for Outbound Call Centers

No one knows for sure how everything will eventually shake out. But Palley suggests that the new rules will cut staff turnover in outbound centers. The Electronic Privacy Information Center, a public interest research center in Washington, D.C., says outbound telemarketing organizations have a 60 to 70 percent turnover rate.

Based on his experience at CyberRep, Palley estimates the turnover rate to be much higher: one in five agents leave each month. The main reason for agent attrition is the outbound telemarketing experience – being sworn at and hung up on

Telemarketing Legislation Resources

The best way to avoid running afoul of the new rules is to stay informed. The following associations and guidebooks are worth checking out:

- Direct Marketing Association: The largest trade association for users and suppliers in the direct, database and interactive marketing fields. Go to: www.the-dma.org
- American Teleservices Association: Provides advice and education in the professional and ethical use of the telephone. Go to: www.ataconnect.org
- CCH Incorporated: A provider of business law information and publisher of the Telemarketing Law Guide. Go to: www.cch.com
- Securities Industry Association: Provides industry-specific information on state-by-state telemarketing regulations. Go to: www.sia.com

repeatedly throughout the day is devastating for morale. Turnover rates for agents handling inbound calls is much lower, Palley says, because the stress level is lower.

According to Ross, all of the new legislation is just speeding up an inevitable process – the ultimate demise of outbound telemarketing efforts in this country. What are some of the forces at work that will impact U.S.-based firms? Within the industry, lower long-distance costs are making it possible to market to American consumers from overseas call centers, leading the industry to move jobs out of the United States. "The move overseas is inevitable as costs in the U.S continue to rise and new technology can make overseas transactions seamless," Ross says. U.S. companies also face challenges in finding outbound telemarketing agents. Ross notes that outbound telemarketing is not regarded as a growth opportunity.

Is the End of the Road in Sight?

Ross believes that outbound telemarketing will soon be a thing of the past, regardless of legislation. The reason: Younger generations do not use a traditional phone like older generations. They are prone to using voicemail and caller ID to screen unwanted calls. Reaching these people requires companies to contact them through other means, Ross says, which include instant messaging, chat and VoIP.

Outbound telemarketers need to develop strategies to make it easy to connect with people through the Web, he says. "Let people contact you at their convenience and don't contact them at their inconvenience." CCMReview

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