

Executive Summary:

*Standards Developed for the
American Teleservices
Association's Self-Regulatory
Organization (SRO) Project*

April 16, 2007

EXECUTIVE SUMMARY: ATA SRO STANDARDS

Introduction

The American Teleservices Association's (ATA) Self-Regulatory Standards represent the culmination of the collective efforts of a cross-section of the ATA's membership, selected specifically for the purpose of generating an all-encompassing Standard for the teleservices industry. These Standards are designed to incorporate federal and state laws and regulations that impact the teleservices sector, while at the same time clarifying "gray" areas in these rules, anticipating additional issues (e.g., Inbound calling), as well as incorporating wherever possible future trends in teleservices.

The Standards provide guidance and best practices with regard to the following areas:

- Outbound Calls
- Inbound Calls
- State Registration requirements
- Call Monitoring
- Compliance (including Policies and Procedures, Training, and Recordkeeping)
- Calls by Charities
- Privacy Standards

These Standards provide clear guidance regarding compliance best practices to teleservices professionals at all levels, whether they are Sellers, Service Bureaus, Service Providers, or Service Representatives, and thus will enable better, and more comprehensive, overall compliance with state and federal rules. The goal of these Standards is, ultimately, to effectively address the legitimate concerns of Consumers relating to the teleservices channel, and to create a system whereby future concerns can be addressed in an ongoing manner.

Highlights of important developments and accomplishments addressed within the Standards are:

- *"A Teleservices Consumer Bill of Rights"*: a concise set of statements encapsulating the recognition by the teleservices industry of the primacy of the needs of Consumers, and the centrality and importance of these needs to the development of the Standards.
- Centralization of FTC and FCC regulations, FTC and FCC opinions and enforcement actions, and state rules into one set of coherent Standards.
- Streamlining and standardization of key terms and concepts.
- Substantial reduction of the complexity currently reflected in the intersection of state and federal rules.
- IVR Standards for Inbound Calls (including a Press "0" Standard).
- Inclusion of privacy/data security guidelines within the scope of the Standards.
- "Nuts and bolts" compliance: extensive Standards created for purposes of documentation, recordkeeping, and monitoring/testing of compliance.

Definitions

The innovations within the Standards start at the very beginning, with the Definitions. In order to generate Standards that truly apply to all activities of entities engaged in both inbound and outbound calling, while at the same time ensuring complete incorporation of applicable state and federal rules, the definitions are divided according to:

- the direction of the communication;
- the type/purpose of the communication;
- the specific entities to whom the Standards apply;
- the means of making/receiving calls; and,
- the type of phone service deployed.

Dividing the Definitions in this manner enables each such term to be combined as appropriate with other terms to clearly identify the exact scope and desired impact of each section in the Standards. For example, Standards governing Outbound Calls delivered via Automatic Dialer for the purpose of sending Prerecorded Informational Messages can be clearly delineated in a manner that will avoid confusion regarding potential overlap with other Standards.

The specific entities referenced are also divided so as to ensure no overlap in the application of the Standards, and wherever possible, the Standards make use of everyday terms used within the industry. For example, an entity hired by a Seller to make and/or accept Calls is defined as a “Service Bureau.” An individual hired by a Seller or a Service Bureau to interact with Consumers in either Inbound or Outbound Calls is referred to as a “Service Rep.” In this way, the key players in the teleservices chain are clearly and separately identified.

A major innovation in the Definitions is the expansion and clarification of the term Established Business Relationship (EBR) to better reflect state and federal laws, as well as to enable better compliance by the industry with all such EBR rules. EBR is divided into three categories (Existing Customer, Former Customer, and Inquiring Consumer) each of which serves to identify the nature of the relationship between the Consumer and Seller in question. This division helps clarify the differences between state and federal law, and in the process, enables better clarity in the application of the EBR standards.

Explanations and Clarifications

Throughout state and federal rules, a number of terms remain either undefined, or confusing in explanation or application. The potential for differing interpretations of these key terms and concepts results in substantially different approaches across the industry with regard to many elements of calling campaigns; thus, these terms and/or concepts are addressed, and expressly defined, in the Standards.

Accordingly, the terms “Cold Call,” “Informational Call,” “Lead Generation Call,” “Prerecorded Message Call,” “Campaign,” “Scrubbing,” “Blocking,” “Normal Business Hours,” “prompt,” and “Survey” are all given precise definitions within the Standards. In addition, the rules governing recurring debit charges (“Reg E”) (see Section 4.7.3.4.) as well as state by state Call

Monitoring and Recording rules (see Section 7) are explained and clarified. Call abandonment rate rules are similarly clarified by including a precise formula (along with explanatory text and definitions) for calculating an entity's Abandoned Call rate.

“Standardizing” Opinions and Enforcement Actions from the FTC/FCC

Both the FTC and FCC (as well as many states) have released voluminous amounts of material to help explain their respective rules (for example, the FTC's guide entitled “Complying with the Telemarketing Sales Rule.”) Although the information within these materials does not rise to the level, strictly speaking, of a “law” or “regulation,” it is nonetheless important that all such statements and guidance be taken into account in any compilation of Standards governing the teleservices industry. Accordingly, the following are included in the Standards:

Recordkeeping and Related Standards. Section 4.6.2.2. memorializes the FCC's requirements regarding “failsafe” DNC compliance mandated in its settlement with Primus. In addition, Section 8 contains detailed Standards regarding the creation of policies and procedures, training programs, monitoring and testing of compliance, and recordkeeping. These Standards are based on a review of Civil Investigative Demands issued by various regulatory agencies, as well as publicly available Consent Decrees.

Liability. Sections 3.5. and 4.3.2.4. memorialize FTC and FCC enforcement actions indicating that questions of liability are interpreted in a broad, inclusive manner, potentially impacting all actors in the teleservices arena. At the same time, the Standards delineate two areas where liability for Wireless Calling infractions should not, in fact, be imputed to the entities responsible for placing the Call in question: 1) where a mistake exists in the Wireless number resources maintained by Neustar (Section 4.5.4.3.); and 2) when a Call is forwarded by a Consumer from a Landline to a Wireless Communication Device.

Additional Specific Provisions:

- Section 4.3.2.6. provides an explanation regarding the extension of EBR to a Seller's affiliates (based upon the FTC's Business Rules).
- Section 4.4.10. clarifies that an In-House DNC request applies to the number identified, not to a specific person making the request.
- Section 4.8.1.2. prohibits attempting to disguise a Sales Call as a “courtesy call,” or a “public service announcement.”
- Section 4.11.5.2.1. recommends the use of the specific term “telemarketing purposes” in abandoned call recorded messages.

New Concepts

The industry has been implementing state and federal telemarketing rules since at least 1989, with the advent of the first Do Not Call list in the state of Florida. Along the way, a number of areas have been identified that fall outside the rubric of specific state and/or federal rules, yet these areas must be addressed in the interests of completeness of the Standards. The following new concepts are therefore included in the Standards:

In-House Specific. Section 4.4.9. provides specifics regarding Consumer “override” of In-House DNC requests (allowing for Seller to contact Consumers if permission is given). “Offer-specific” permission allows a three-month window to call where a Consumer has given express consent; “DNC List Removal” occurs when the Consumer specifically requests it in a signed writing. In addition, Section 4.4.6.1. indicates that it is acceptable practice to remove from In-House DNC lists those telephone numbers that can be confirmed as having been disconnected and reassigned.

Answering Machine Rules. The Standards directly tackle an area that is only addressed indirectly by state and federal rules - the proper handling of messages left on Consumer’s Answering Machines. Sections 4.8.1.1., 4.13.2.8., and 4.14.1. provide specific Standards for both live and Prerecorded Calls that leave messages on Answering Machines.

Privacy: Section 12 provides guidance with respect to maintaining the privacy and security of private information, with specific reference to federal rules (FTC Act, Gramm Leach Bliley, HIPAA, and the Fair Credit Reporting Act), state rules (data breach notification rules), and industry standards (Payment Card Industry rules.) Although privacy is far from a “new” concept, its inclusion within the scope of teleservices-specific Standards is novel, and inclusion of this Section on Privacy highlights the importance of ensuring the privacy and security of the highly sensitive Consumer data that is entrusted to the teleservices industry on a daily basis.

Inbound Standards

The ATA anticipates that Consumers will continue to call for regulations to be enacted regarding Inbound Calling practices. In response to this need, the ATA has included a set of Standards aimed specifically at Inbound practices, with an eye toward ensuring that in all circumstances involving telephonic communication with a Seller, Consumer’s needs and expectations are fulfilled. Perhaps the most important development in this area is the commitment to ensuring that pressing “0” is a universal default action for Consumers (Section 5.5.4.), such that when Consumers make an Inbound Call, they can rely on getting a response with helpful information upon pressing “0.” Other specific Inbound Standards include:

- Section 5.2.1. mandates disclosures for Inbound Calls.
- Sections 5.2.3. - 5.2.5. creates Service Bureau, location, and supervisor disclosure rules for Inbound Calls.

- Section 5.4. applies the Outbound Standards regarding pre-purchase disclosures and billing authorizations (and recordkeeping with regard to each) to Inbound Calls. (FTC rules only apply such standards Inbound Calls if the entity is attempting to sell non-durable office or cleaning supplies.)
- Section 5.5. creates comprehensive guidelines for the use of IVR Systems (including navigation, use of plain language, prompt interruption, and additional best practices.)

Maintaining Consistency and Reducing Complexity

In order for a teleservices provider to maintain compliance under current regulations, that provider must incorporate a complex and conflicting set of state and federal rules into its calling campaigns. The sheer number of such regulations has made it extremely difficult for teleservices providers to maintain effective compliance, and as a result, legitimate Consumer interests and expectations have not been met on a consistent basis. These Standards therefore attempt, wherever possible, to achieve consistency and reduce complexity. Examples include:

Affiliate Standards. Sections 4.4.9.3. and 4.5.3.3. apply the FTC’s EBR “affiliate” rules (as stated in Section 4.3.2.6.) and apply them in the context of In-House DNC and Wireless Permission Standards. The Standards also require “parity” between application of EBR and In-House affiliate rules (Section 4.4.4.2.).

Permission Standards. The Standards apply consistent permission requirements with regard to National DNC, In-House DNC, Wireless Calls, and Prerecorded Message Calls, making use of the National DNC’s 3-month Inquiring Consumers exception as a default time period for permission that is not signed in a writing.

Billing Authorizations. Section 4.7. creates common rules for ALL transactions (no separation between credit/debit and novel payment methods, as under the FTC billing rules.) Under the Standards, there are only three categories for billing purposes: 1) cash, check, money orders; 2) ALL transactions not included in number 1, OTHER than transactions involving pre-acquired account information plus Free-to-pay conversions; and 3) transactions involving pre-acquired account information plus Free-to-pay Conversions. Section 4.7.3. also recommends that Members only make use of either express written authorization or by recording the Consumer’s express oral authorization (and does not recommend using other means of obtaining express informed consent or express verifiable authorization, as these terms are defined by the FTC’s billing rules).

Calls by Charities. under Section 9.1.4.1., the same rules are applied to Charities irrespective of whether the Charity is making Calls to raise funds, sell something to indirectly raise funds, or to ask for volunteers (this is accomplished by referring to all such activities as the solicitation of a “Contribution”). In addition, the Standards treat Outbound Calls for Contributions by Charities the same as a standard Outbound Call for purposes of the following rules: In-house DNC; Wireless Calling; Billing Authorizations; Disclosures (but note specific disclosures for Charity Calls); Upselling; Caller ID Transmission; Calling Time Restrictions; Prerecorded Messages; and Inbound Calling Standards.

Prerecorded Message Calls: Section 4.13. adopts the approach that Prerecorded Message Calls are generally prohibited, but then delineates the specific circumstances under which this prohibition does not apply, specifically: calls for debt collection; surveys; emergencies; Informational Calls (only with EBR or express permission); and for Sales Calls with EBR or express permission (and the Standards provide specifics with regard to what constitutes permission and how long it applies). (The Standards also make reference to FTC abandonment rate rules and their impact on the Prerecorded Message Call Standards.)

Additional Area of Consistency

- Section 4.4.7. requires Sellers to send In-House DNC policies upon Consumer's request within 30 days from the date of the request (same time frame as for the honoring of In-House DNC requests).
- Section 4.5.3. applies the rules governing Sales Calls to Wireless Communication Devices to ALL Calls, including Calls completed via Manual Dialing (thus extending current FCC prohibitions to cover Manual Dialing as well).

Summary

The ATA has developed these Standards with the sincere belief that a centralized, "best practices" approach that incorporates state and federal rules but also clarifies and, when necessary, augments such rules, is the best means to achieve uniform and consistent compliance across the teleservices industry. The ATA considers these Standards to be, by themselves, a significant, necessary and welcome addition to the everyday lexicon of teleservices compliance professionals. In conjunction with a Self-Regulatory Program whereby the Standards are effectively promulgated and enforced, in participation with the FTC, the FCC, and state Attorneys General, these Standards will serve as the lynchpin of a program that will focus and strengthen compliance at all levels of the industry. Such a program, with proper administration and oversight, would serve to effectively implement the core values of the Standards, as reflected in the "Teleservices Consumer Bill of Rights," to the ultimate benefit of Consumers and the industry.