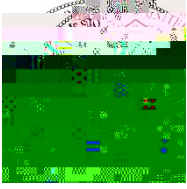


UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580



Division of Marketing Practices

February 4, 2010

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Request for Advisory Opinion:
Prerecorded Messages to Customers Regarding

Telemarketing Sales Rule, Final Rule, 68 Fed. Reg. 4579, 4655-56 (2003).¹ Consistent with this interpretation of the term “telemarketing,” the Commission has brought enforcement actions against telemarketers who delivered prerecorded messages that are not designed to make sales over the telephone, but to induce consumers to purchase goods or services by other means, such as sales events at retail stores.²

Although the Commission has observed that “telemarketing” does not include “informational messages,” it has stressed that the TSR does cover messages that combine an informational message with direct or indirect solicitation. See Telemarketing Sales Rule, Final Rule Amendments, 73 Fed. Reg. at 51173 (2008); Telemarketing Sales Rule, 71 Fed. Reg. 58725, n.107 (2006). Examples of messages that provide information but are also part of a campaign to induce sales include invitations to special retail sales and events, ticket offers for musical events, and announcements of local promotions. 73 Fed. Reg. at 51,173 n.113.

We conclude that the proposed prerecorded messages announcing temporary access to RCN channels, followed by subsequent communications concerning how RCN subscribers may purchase continued access to these channels, are part of a plan, program or campaign to induce sales and are not purely informational. Therefore, even though details regarding price and how RCN subscribers can purchase access to the channels described in the message are

¹ See also 68 Fed. Reg. at 4587 (2003) (“Thus, a sales call using a prerecorded message may be ‘telemarketing’ if it is part of a plan, program, or campaign for the purpose of inducing the purchase of goods or services or inducing a donation to a charitable organization, is conducted by use of one or more telephones, and involves more than interstate call.”)

² See, e.g., *United States v. Voice Mail Broadcasting Corp.* Civ. No. 2:08-cv-00521 (C.D. Cal., filed Jan 15, 2004) (prerecorded messages promoting retail sales); *United States v. The Broadcast Team* Civ. No. 6:05-cv-01920 (M.D. Fla., filed Dec 29, 2005) (prerecorded messages promoting attendance at conferences).

