

GUIDELINES FOR TELEMARKETING

The Electronic Retailing Association (ERA) believes that consumer confidence is the key to the continued growth and success of the electronic retailing industry. In order to encourage fair, ethical, and responsible telemarketing practices that will promote consumer confidence, ERA has adopted the following Guidelines for Telemarketing, which apply to telemarketing campaigns conducted by, or on behalf of, ERA members.

GENERAL PRINCIPLES

ERA members should be aware of the federal and state laws and regulations that govern sales and marketing by telephone, and conduct their business in compliance with those laws and regulations.

ERA members should encourage the companies or individuals with whom they do business to follow the principles set forth in these Guidelines for Telemarketing, and should not do business with firms that they know are violating these principles or otherwise engaged in dishonest or unethical business practices.

Because these Guidelines cannot anticipate and answer all the questions that may arise due to technological advancements and other future changes in the marketplace, ERA members should look to the spirit as well as the letter of these Guidelines, always striving to be fair and reasonable in their dealings with consumers.

Most importantly, ERA members should tell the truth, the whole truth, and nothing but the truth to consumers.

DISCLOSURES

ERA members who conduct their own telemarketing in-house, those who outsource telemarketing services, and those who provide telemarketing services to others each have a responsibility, consistent with their role in a particular promotion, to ensure that all of the material terms and conditions of an offer are disclosed to prospective customers. Telephone sales representatives working on members' behalf and the scripts on which they rely, or, in some situations, a television ad or direct mail piece that precedes an inbound call, should promptly disclose this material information. The terms of the offer should be sufficiently clear and complete so that the average consumer will understand what is being offered, what it costs, and what his or her ongoing commitments or obligations are, if any, before purchasing the advertised product or service. The offer should make it clear if accessories or other items depicted or mentioned during the solicitation are optional and not included in the advertised price. All costs related to an offer (including postage and handling, taxes, etc.) and other material terms must be disclosed.



Members should ensure that, at a minimum, the following information is provided:

For **OUTBOUND** calls, members should disclose promptly:

- The name of the person calling;
- The name of the entity on whose behalf the call is being made (for instance, the name of the company selling the product being offered); and
- The purpose of the call (e.g., to sell goods or services);

AND

For **ALL** calls, members should disclose, before taking consumers' credit card or bankcard information:

- The nature of the goods or services being offered;
- The total cost and quantity of the goods or services (including any additional costs, such as shipping or handling fees);
- Any material restrictions, limitations, or conditions to obtain or use the goods or services; and
- The terms and conditions of the seller's refund policy, if one is mentioned (or the fact that no refunds are available if refunds are not offered).

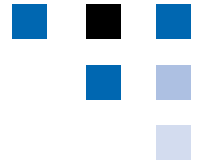
Members should always be prepared to provide, on request, a telephone number or address the consumer can contact for inquiries or concerns about their order, and must disclose the seller's address or telephone number—without waiting for a request—during outbound calls unless the member has an established business relationship with the called party, has called with the consumer's prior consent, or is calling on behalf of a non-profit organization.

If there are any restrictions, limitations, or conditions on a consumer's ability to buy, receive, or use the advertised goods or services, these terms should also be disclosed if they are "material" to a purchasing decision—that is, if they are likely to influence a consumer's decision to buy, sign up, etc. Members should also consult the "Advertising Claims" section below.

ERA members also should be alert to requirements for providing other information in connection with certain types of promotions, such as sweepstakes or other prize or giveaway promotions and additional requirements that apply to certain inbound calls. Members also should be sure to consult state laws, which may impose different or more stringent requirements, such as an obligation to make certain disclosures during the first few seconds of an outbound call.

TAPING & MONITORING CALLS

Members should inform telemarketing sales representatives (TSRs) if the calls the TSRs place will be subject to random monitoring or recording for purposes of assuring regulatory compli-



ance or for quality control. Members also should be aware that FCC regulations provide that a call may be recorded only (1) with the consent of both the TSR (e.g., when hired) and the consumer, (2) after disclosure to all parties that the call will be recorded and the disclosure is included as part of the recording, or (3) if a beeping mechanism is heard. Again, be sure to check applicable state laws, which may set stricter standards.

PRIVACY

Members should maintain, and require their telemarketing service providers to maintain, a list of consumers who ask not to receive telemarketing calls as required by Federal Trade Commission and Federal Communications Commission regulations. These lists should be kept for a minimum of 10 years, as mandated by FCC rules. ERA members should maintain a written policy describing their procedures for implementing these “Do-Not-Call” requirements and make it available to consumers on request. Members engaged in telemarketing also should take steps to ensure that the appropriate personnel are trained in the requirements and procedures regarding “Do-Not-Call” lists, either by providing such training or requiring that the telemarketing service provider do so.

Members that collect individually identifiable information from consumers during a telephone sales solicitation should not misrepresent whether or how that information may be used. Members should honor a consumer request that individually identifiable information about the consumer not be rented, sold, or exchanged with third parties for marketing purposes. Members should not rent, sell, exchange, or otherwise provide individually identifiable health or medical data about a consumer, or a consumer’s credit card number, checking account number, or similar information to a third party (other than a third party who assists the member to process or complete authorized purchases or other transactions) for use in connection with sales solicitations without the consumer’s express authorization.

Access to data about consumers by employees or agents of a telemarketer or seller should be restricted to personnel who reasonably require such access in the performance of their duties.

For outbound telemarketing campaigns to solicit a purchase of consumer goods or services, members should disclose that they already possess account-billing information about the called party, if that is the case.

BILLING PRACTICES

ERA members should ensure that billing and collection practices in connection with telemarketing or telephone billed purchases are fair and accurately represented.



Members should ensure that the billing methods they will use are clearly disclosed to consumers before completing a telephone sale. If a customer will be billed automatically or regularly, that fact should be disclosed, including when billing will begin, how often charges will be billed, how much will be charged each period, and the total amount that will be billed (when known). Members should also explain if a membership or subscription will be renewed automatically unless the consumer cancels. Offers involving continuity programs should comply with ERA's "Guidelines for Continuity Programs."

ERA members who offer consumers a "free trial" of an advertised product or service should not charge customers' credit cards, debit their checking accounts, or cash their checks or money orders until the free trial period has expired. These offers should be accompanied by clear disclosure of when the free trial period begins, when it ends, and either how customers may cancel without being charged or how they will or may get cancellation instructions (at no additional cost) before the trial period ends. Members should be aware that these and similar offers have recently been subject to increased regulatory scrutiny; members should be alert to continuing developments in this area.

Members should obtain express consent from a customer before submitting or processing charges to that customer's credit, charge, or bank account. A customer's authorization to use the customer's bank account to obtain payment through a "phone check" or "demand draft" should be verified when required by FTC rules by: (1) getting an advance written authorization from the customer; (2) tape recording the consumer giving express oral authorization; or (3) sending a written confirmation of the transaction before submitting the draft for payment. Taped authorization must clearly demonstrate that the seller or telemarketer has disclosed six items of information about the transaction, as well as the customer's express authorization that funds be removed from his or her account. Post-sale confirmation also must disclose the same six items of information, which are:

- the date of the draft;
- the amount of the draft;
- the name of the consumer whose account will be debited;
- the number of draft payments authorized (if more than one is authorized);
- a telephone number that the consumer can call with questions (during normal business hours); and
- the date of authorization.

Members should not place, or cause anyone else to place, any charge on a consumer's telephone bill if they know or should know that the consumer responsible for paying the telephone bill did not authorize the charge.



ADVERTISING CLAIMS

All statements made during a telemarketing call must be truthful and not misleading, whether or not they are specifically made with respect to the product or service being marketed. Telephone solicitations should not contain deceptive implied claims, or omit material information that needs to be disclosed to prevent the advertisement from being deceptive. Any necessary qualifying disclosures should be audible to an ordinary listener, provided in the same language that is principally used in the solicitation, and presented at the same rate or cadence as the primary solicitation.

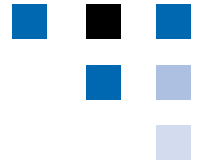
All comparative advertising should inform buyers of the benefits of the marketer's product, and not unfairly disparage a competitor's product. Comparisons should be presented fairly and accurately.

There must be a reasonable basis, consisting of competent and reliable evidence, for all express or implied objective claims made about a product or service during a telemarketing call. If a member makes an express or implied representation that a claim's truth has been scientifically established or proven, the member must possess a sufficient level of evidence to convince the relevant scientific community of the claim's truthfulness. At a minimum, a member should always have the amount and kind of substantiation that it claims it has.

Claims relating to a product warranty must be truthful and consistent with the terms of that warranty. A copy of the warranty must be made available free of charge to any consumer who requests one, and telemarketers should disclose how consumers can review the full text of the warranty or how they may obtain a copy of it without purchasing the product.

ERA members should not advertise and offer merchandise for sale through telemarketing unless they have a reasonable basis to believe that they will be able to ship that merchandise within the time specified in the offer (or, if no time is specified in the offer, within 30 days after receipt of an order). A member should not charge a customer's credit card account, debit a customer's checking account, or cash a customer's check or money order unless it has shipped or otherwise provided the goods ordered, or is prepared to ship or otherwise provide those goods immediately. If, after receiving an order, the marketer learns that the product cannot be shipped on time, it should notify its customers of that fact, allow them to cancel their orders if they wish, and make any necessary refunds promptly. A member should not substitute merchandise that is materially different from what the customer ordered unless the customer agrees to the substitution.

A member who offers a satisfaction or "money-back" guarantee to its customers should honor valid refund requests promptly. Any telephone solicitation that mentions a money-back guarantee should disclose any material limitations or exceptions that may apply to that guarantee (e.g., "less shipping and handling"). Any member who offers a money-back guarantee should main-



tain an adequate reserve or otherwise ensure the availability of funds to satisfy refund requests. ERA members should consult the Association's other Guidelines for additional information and guidance on these and other advertising issues.

CALLING HOURS AND PRACTICES

Outbound telemarketing calls to residences should not be made before 8:00 a.m. or after 9:00 p.m., with time of day determined based on the consumer's location, unless the seller has an established business relationship with the called party. (Members should, however, bear in mind that some state laws establish shorter periods during which calls may be made, or limit calling on Sundays or holidays.) Members should never place a call for purposes of annoyance, abuse, or harassment. Telemarketing calls should not disparage any person or group on the grounds of race, religion, national origin, gender, age, or sexual orientation, or include indecent or offensive content.

FACSIMILE ADS

ERA members should not use facsimile machines to send any advertising material promoting the commercial availability of any goods, property, or services, without the prior express permission of the recipient of the fax. Federal standards allow marketers to infer that the recipient has given permission to send such faxes from an existing business relationship with the recipient; state laws may vary. Any facsimile also must identify, on each page or on the first page, the date and time it is sent and the sender's identity and telephone number of the fax machine sending the message.

AUTODIALERS AND PRE-RECORDED MESSAGES

No calls that are placed by using an automatic dialing and announcing device ("autodialer"), or that play an artificial voice or pre-recorded message, should be made to emergency telephone lines; guest or patient rooms of hospitals, elderly homes, and the like; or radio common carrier services (such as cellular or paging services) if the called party will be charged for the call. Autodialers should not be used in a way that simultaneously engages two or more lines of a multi-line business.

Members should not use artificial voice or pre-recorded messages to advertise the commercial availability of property, goods, or services in an outbound call to a residence except with the called party's prior express consent, or to a consumer with whom the member has an established business relationship.

CALLER IDENTIFICATION FEATURES

Members, whether using live or pre-recorded solicitations, should not attempt to prevent or impair the display or function of caller identification service or equipment when the calling party's telephone equipment is capable of allowing the display of the originating telephone number.



COMPLIANCE RESPONSIBILITIES

ERA members should take reasonable steps to ensure that all participants in a telemarketing campaign—including sellers, telemarketing service providers, list brokers, billing agents, or other parties—understand and accept responsibility for their own role in ensuring compliance with the applicable laws and regulations implicated by their marketing campaigns, and these Guidelines for Telemarketing. Members engaged in telemarketing, or who provide assistance to others to do so, should conduct reasonable inquiry into the experience, background, and practices of those with whom they work with in connection with a telemarketing campaign. ERA members should not provide assistance to, or accept it from, anyone that they know or reasonably should know is violating the laws and rules that govern telemarketing.

SELF-CERTIFICATION/ENFORCEMENT

Subscription to these Guidelines for Telemarketing is a condition of ERA membership. Members shall have the right to certify their compliance with these guidelines to members of the general public and the media. Willful violation of the Guidelines for Telemarketing is a basis for expulsion from the Association.