

charitable organizations will not be required to ensure that they are not making calls to consumers who have placed their telephone numbers on the national "do-not-call" registry.<sup>1041</sup> Rather, they will only have to honor individual consumer requests not to be called by the particular charity.<sup>1042</sup>

This change is likely to be of significant benefit to smaller charitable organizations since these organizations often find it more efficient to employ for-profit firms to make their calls rather than developing and maintaining the capacity to make such calls using their own staff.<sup>1043</sup> For example, APTS reported that 75 percent of their members chose to hire other firms to manage their telemarketing operations. They further reported that the average annual cost of outsourcing these operations was \$182,000, whereas the estimated cost of the stations doing the same amount of telemarketing with its own personnel was \$224,000, an increase of almost 25 percent.<sup>1044</sup> Similarly, Red Cross commented that it is more economical to hire a third party to operate short term blood-donor recruitment programs than to hire and maintain a full-time staff to perform such functions. According to Red Cross "[s]uch trained third party professionals offer expertise and operational efficiencies that cannot be rapidly duplicated by Red Cross to respond to the volatile demand for blood."<sup>1045</sup>

*Written confirmation as express verifiable authorization.*

Another change that should reduce the burden on small firms involves the procedures a firm may use to obtain the consumer's express verifiable authorization to use an account other than the consumer's credit card or debit card to pay for a purchase. In the NPRM, the Commission proposed to eliminate a procedure by which a firm was permitted to obtain authorization by sending the consumer written confirmation prior to the time the account was charged. In part this proposal was based on the impression that very few firms used this method of obtaining express verifiable

authorization.<sup>1046</sup> However, commenters indicated that this was not the case and that many smaller firms—particularly newspapers—used this method.<sup>1047</sup> In response, the Commission has decided to retain the written confirmation method of obtaining express verifiable authorization, with certain modifications, including an exception that makes it unavailable in cases where the transaction involves a "free-to-pay conversion" feature and preacquired account information.<sup>1048</sup>

*No ban on preacquired account information.*

Another proposal in the NPRM that attracted considerable business opposition was the prohibition on the disclosure or receipt of any consumer's billing information. Commenters argued that such a prohibition on the use of preacquired account information would increase the costs of telemarketing. While these costs were not argued to be specific to small businesses, the costs faced by small businesses would be increased along with those of larger ones. According to CCC, requiring the consumer to provide an account number would add between 60 and 90 seconds to the length of a telemarketing call in those instances where the telemarketer already has the consumer's account information.<sup>1049</sup> MPA estimated the cost of requiring consumers to repeat their account information in the case of an upsell to be between 35 and 60 seconds.<sup>1050</sup> In addition, MPA suggested that requiring consumers to read their account numbers in all instances would lead some consumers to decide not to purchase the item being offered. The effect could be, they suggested, a reduction of five to 30 percent in consumer purchases in response to particular offers.<sup>1051</sup> Finally, a ban on the use of preacquired account information could increase the costs of engaging in telemarketing because of errors in the account information obtained from the consumer—either because the consumer misreads the

account number or because the telemarketer makes a mistake in taking down the number.<sup>1052</sup>

As discussed in the SBP above, the Commission has decided not to prohibit the acquisition and use of preacquired account information. Instead, the Commission is limiting the prohibition to unencrypted account information and is requiring that telemarketers and sellers obtain the consumer's express informed consent before any purchase is charged to a consumer's account using preacquired account information. Except for transactions that involve a "free-to-pay conversion" feature combined with preacquired account information, the only steps a seller or telemarketer is required to undertake to obtain this consent are to provide the consumer with sufficient information for the consumer to understand the account that will be charged and to obtain the consumer's express agreement to have the purchase charged to that account. Since both of these are practices that an honest business would follow even in the absence of a rule provision, it is clear that the costs businesses argued would follow from the original proposal have been eliminated.

*Relaxed regulation of abandoned calls.*

Another proposal contained in the NPRM that businesses argued would significantly increase the costs of telemarketing was the proposal to prohibit telemarketers from "abandoning" telemarketing calls—that is, to prohibit making a call unless a telemarketing sales representative is available to talk to the consumer if the consumer answers. Critics of this proposal argued that it would effectively ban the use of predictive dialers.<sup>1053</sup> This would, they argued, significantly reduce the amount of time the individual telemarketing sales person spends talking to consumers. According to CCC, a telemarketing sales person can handle 13 to 14 calls per hour using a predictive dialer set to abandon five percent of calls. Without a predictive dialer, the same agent can only handle around eight calls per hour—a reduction of about 40 percent.<sup>1054</sup> Another source suggested that a telemarketer using a predictive dialer could make 20 calls per hour, whereas only five calls per hour would be possible without the dialer.<sup>1055</sup>

<sup>1041</sup> Amended Rule § 310.6(a).

<sup>1042</sup> Amended Rule § 310.4(b)(1)(iii).

<sup>1043</sup> Hudson Bay-Goodman-NPRM at 2. Hudson Bay noted that "[i]nstead of renting space, buying computers and phone equipment, hiring supervisors and so on, HBC's clients find it cheaper to contact their members and donors by sharing these resources. Even after paying HBC's fee, which ranges from 4 to 7%, it is much cheaper for these non-profits to centralize these services. The savings achieved by phone company volume discounts alone pays more than half of HBC's fee."

<sup>1044</sup> APTS-NPRM at 3-4.

<sup>1045</sup> Red Cross-NPRM at 3-4.

<sup>1046</sup> 67 FR at 4508.

<sup>1047</sup> See, e.g., June 2002 Tr. III at 32-33 (NAA).

<sup>1048</sup> See amended Rule § 310.3(a)(3)(iii), and discussion of that provision above.

<sup>1049</sup> Miller Study at 17. According to the Miller Study, the total cost of this prohibition would have been approximately \$1.5 billion. However, this estimate appears to be based on the incorrect assumption that the prohibition on the use of preacquired account information would add 60 to 90 seconds to every sale made in an outbound telemarketing call. In fact, the only sales that would be affected are those where the seller would otherwise obtain payment using preacquired account information.

<sup>1050</sup> MPA-NPRM at 24.

<sup>1051</sup> *Id.* at 19.

<sup>1052</sup> ABA-NPRM at 8; Assurant-NPRM at 3-4; BofA-NPRM at 7; Cendant-NPRM at 7.

<sup>1053</sup> June 2002 Tr. I at 211 (CCC); PMA-NPRM at 30; PCIC-NPRM at 2.

<sup>1054</sup> Miller Study at 15.

<sup>1055</sup> Marketlink-NPRM at 3. This estimate, and perhaps the estimate of CCC, may overestimate the