

**CODE OF ETHICS**

Telemarketers must be trained and aware of all applicable laws

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Before making or receiving calls, telemarketers must receive adequate training in professional telemarketing skills and follow recognized procedures and practices for proper etiquette and courtesy. They are also required to operate in accordance with all applicable federal, state and local laws, business codes and regulations. The governing bodies administering these laws and regulations include, but are not limited to, the Federal Communications Commission (FCC), the Federal Trade Commission (FTC), the US Department of Justice and the state attorneys general offices.

Federal compliance will not suffice under all state laws. State approaches vary widely, requiring things such as registration and/or bonding, follow-up signatures for valid sales, cooling-off periods to cancel sales (and disclosures of such), narrower "Do not call" mechanisms and time-of-day restrictions.

All sales offers must be stated clearly and honestly so that the parties know exactly what they have committed to and what they will be getting in return. Claims which are untrue, misleading, deceptive, fraudulent or unjustly disparaging of competitors are deemed by the ATA to be unprofessional and dishonest.

**Calling Hour Restrictions**

Ethical telemarketers have long known not to place calls to private residences during hours that might be considered unreasonable, but now federal laws spell out these calling hours. Be particularly sensitive to inconveniences caused by

weekend calling.

### **Use of Lists**

Untargeted calling is not in the best interest of consumers, businesses or the telemarketing industry. Calls should always be targeted to people or companies likely to have a use for the particular product or service being offered. The ATA does not condone random or sequential number calls with no concern for the offer applicability to the call recipient. The only exception is legitimate market research, where random sampling is required to assure the validity of a particular study.

### **Monitoring Guidelines**

The ATA strongly supports monitoring as a tool for assuring the quality of calls and improving individual performance through ongoing training and development. It allows employers to observe and evaluate on-line performance and the telemarketing program and provides immediate feedback on both. It also protects consumers and customers against unethical practices by individuals and protects the employer's rights to supervise and regulate the quality of work being performed. Some suggested guidelines for monitoring in the workplace are:

1. Make applicants aware of the company's monitoring policy before they accept the job. This is as easy as adding a statement to the bottom of the job application or attaching an addendum.
2. Give to new hires, and post in all areas a written work policy that addresses all employee concerns. This policy should include how and why monitoring is done and how soon afterward a review will take place. (As a rule, feedback should be given immediately after the call is monitored, or as soon as possible.)
3. While the ATA strongly supports the position that monitoring work-related calls is not a violation of "personal privacy," we do advocate the employee's right to privacy during personal conversations. Therefore, each call center should have separate phones that are never monitored available for their employees' personal calls.

### **Delivery Must Comply with Offer**

Telemarketers must comply with the

terms of the specific offer, and inform consumers of their options if this commitment is not met. At a minimum, all offers should be in compliance with the FTC's Mail Order Merchandise 30-Day Rule.

### **What the ATA and this Code of Ethics are all about**

The American Teleservices Association (ATA), a not-for-profit trade association founded in 1983 to represent and serve the telemarketing profession, is committed to meeting the needs of its members, as well as protecting the rights of consumers and businesses who have telephone contact with its members.

Through professional programs and activities, the ATA attempts to educate its members, the public and public officials concerning the ethical behavior for both inbound and outbound telemarketing. We have also developed this Code of Ethics brochure to help any business, consumer or legal entity objectively measure telemarketing program integrity and professional performance.

- The ATA supports the Federal Trade Commission (FTC) Telemarketing Sales Rule and the Federal Communications Commission (FCC) Telephone Consumer Protection Act.
- The ATA strongly encourages its members to review all federal, and local laws for compliance before initiating any telemarketing program.
- The ATA advocates the highest standards of professionalism and ethical behavior for all telemarketing operations. These standards, when conscientiously adhered to and practiced call-by-call, help assure the long-term satisfaction of ATA members, their employees and customers while preserving the future of our profession.

This Code of Ethics is an educational tool developed under the premise that professional, reputable programs have specific goals, achieved through closely supervised high-quality performance, with the public interest - business and consumer - in mind. For legal matters,

consult your own counsel.

The Direct Marketing Association offers a Telephone Preference Service, a useful tool for removing names of consumers who have expressed a preference against all telemarketing calls. To subscribe, you may submit your request in writing to:

**Telephone Preference Service**

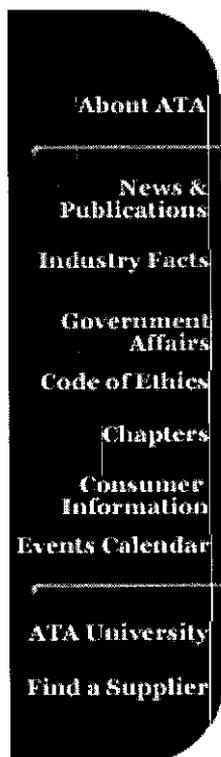
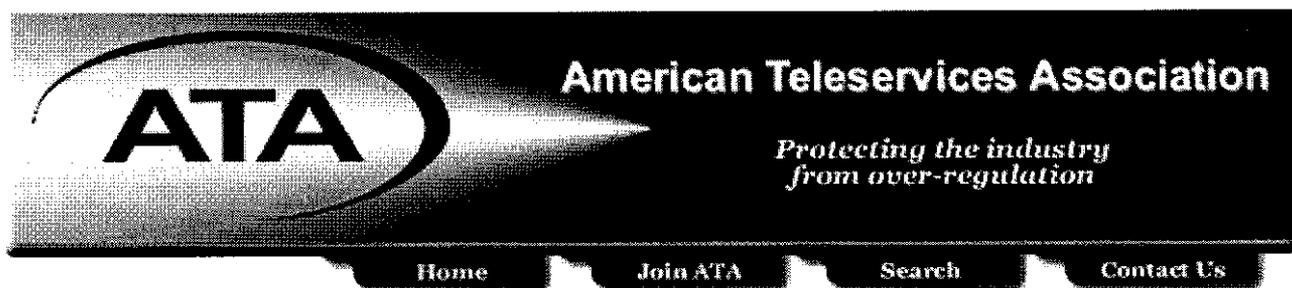
c/o The Direct Marketing Association

P.O. Box 9014

Farmingdale, **NY** 11735-9014

A business guide to the Federal Trade Commission (FTC) Telemarketing Sales Rule implementing the Telemarketing and Consumer Fraud and Abuse Prevention Act of 1994





## COMPLIANCE SEMINAR

### Schedule of Events:

**Faculty:** Matt Mattingley, Director of Government Affairs, ATA  
 Tyler Prochnow, Attorney, Lathrop & Gage

8:30 am - 9:00 am Registration

9:00 am - 9:10 am Welcome/Opening Remarks

9:10 am - 10:45 am An Examination of the Top Ten Regulatory Issues (Part I)

- Privacy and Use of Personal Information
- Unfair & Deceptive Trade Practices
- Do-Not-Cali Requirements
- Calling Hour Restrictions

10:45 am - 11:15 am Morning Break

11:15 am - 1:00 pm An Examination of the Top Ten Regulatory Issues (Part II)

- Registration & Bonding
- Payment/Collection Issues
- Non-Rebuttal Requirements
- Blocking Caller ID
- Disclosure Requirements
- Predictive Dialer Issues

1:00 pm - 2:00 pm Networking Luncheon

2:00 pm - 4:00 pm Compliance Audit & Checklist Preparation

4:00 pm - 4:15 pm Afternoon Break

4:15 pm - 5:00 pm Question & Answer Session

5:00 pm Meeting Adjourns

**\* Topics subject to change as issues develop.**



**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Rules and Regulations Implementing	)	CG Docket No. 02-278
the Telephone Consumer Protection	)	
Act of 1991	)	
	)	

**COMMENTS OF THE AMERICAN TELESERVICES ASSOCIATION**

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**AFFIDAVIT OF LARRY RATHBONE**

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I, LARRY RATHBONE, do hereby attest as follows:

1. I am over **18** years of age and am competent to provide this Affidavit. The statements contained in this Affidavit are based on my personal knowledge.
2. I am the Vice-president of Marketing of American Exteriors, Inc. ("American Exteriors") located at 1169 West Littleton Blvd., Littleton, Colorado 80120. As Vice-president of Marketing at American Exteriors, I am responsible for developing, implementing and managing all forms of marketing and marketing systems, including telemarketing efforts. As part of these job responsibilities, I oversee the use of American Exteriors' predictive dialing system.
3. American Exteriors has been engaged in the business of providing replacement windows and vinyl siding to homeowners since 1994.

4. One of the methods of advertising American Exteriors uses to generate business is telephone solicitation of the general public. Because telephone solicitation is one of the cheapest methods of advertising and business generation, American Exteriors relied on telephone solicitation to break into the market and continues to rely heavily on telephone solicitation today to advertise and generate business leads. Indeed, approximately 95% of the company's nationwide gross revenues in 2001 were attributable to telephone solicitation calls to individuals with no previous business relationship with American Exteriors.

5. American Exteriors does not telephone random consumers. Instead, American Exteriors purchases from a data compiler lists of phone numbers belonging to owners of single-family homes. By using a list of single-family homes, American Exteriors narrows the pool of people it calls to those who might have a need for its products.

6. To conduct telephone solicitations, American Exteriors relies on a predictive dialing software package, which includes software for database administration, answering machine detection ("AMD"), and predictive dialing ("predictive dialer"). The predictive dialer uses intelligent algorithms to determine the number of calls it must dial from the list of American Exteriors' prospective customers so that, when each sales agent finishes a call, the dialer will have reached a potential customer to transfer to that available agent. This prediction is based on a number of factors, including the number of available telephone lines, the number of sales agents on duty, the average number of calls that do not reach a live person (*i.e.*, no answers, busy signals or answering machines), and the average length of each call once connected.

7. The use of the predictive dialer occasionally causes dead air when the consumer answers the line or causes the call to be dropped. This occurs when the dialer reaches more live persons than there are agents available to field the call. Because the dialer is imperfect in its prediction, the consumer may hear dead air while waiting for an available operator or, if the predictive dialer determines that an agent will not be able to take the call in the near future, the call may be terminated.

8. A consumer called by American Exteriors will sometimes hear “dead air” upon answering the telephone because American Exteriors uses AMD software, which needs some time to determine whether an answering machine or live person has picked up the telephone. AMD technology bases its decision on voice patterns and digital noise. The AMD software recognizes an upward inflection in the voice followed by silence as human (i.e. “Hello?”) and the absence of that inflection and voice pattern as machine (i.e. “You’ve reached the Smith residence. Please leave a message at the tone.”). AMD also recognizes popping and hissing, which characterize recordings, as an answering machine. The determinations made by AMD software, like predictive dialer timing predictions, are not infallible due to variations in answering machine messages, variations in how people answer the phone, conflicting indications from voice pattern and digital noise information, and the amount of time AMD has to make its decision,

9. American Exteriors has informally experimented with different settings for the amount of time in which AMD must ascertain whether a live person has answered the telephone in an effort to determine how that timeframe affects the efficiency of American Exteriors’ operators. If AMD software is given only one to two

seconds in which to make its determination, it recognizes only one-third to one-half of the answering machines it encounters. The remaining one-half to two-thirds of answering machines reached are sent to operators because the AMD software was unable to decide whether the voice answering the telephone was human or machine. Conversely, when AMD has four seconds to make its determination, it recognizes nearly 100% of the answering machines it encounters.

10. The other variable in whether a consumer experiences dead air or a dropped call is the "abandonment rate," which is the percentage of calls that are dropped (due to unavailability of a teleservices operator upon call completion) out of the total number of calls placed by the predictive dialer. Predictive dialers do not allow users to set the maximum length of time between call connection and termination when no operator is available, but rather only permit users to specify an acceptable abandonment rate which, in part, then determines how many calls the predictive dialer will place. Thus, American Exteriors cannot set a maximum total length of time the consumer must wait to reach a live person (*i.e.*, the time it takes AMD to determine whether a person or an answering machine has answered, plus the brief additional period the consumer might wait for an available operator). Because American Exteriors acknowledges that this delay could be irritating to its potential customers, American Exteriors endeavors to regulate the length of the delay by setting the time period during which AMD must ascertain whether a person or an answering machine has been reached and by setting the dialer's maximum acceptable abandonment rate.

11. American Exteriors has found that its employees' productivity and efficiency are extremely low when the abandonment rate is low. For example, when the

abandonment rate is 1%, sales agent down time, *i.e.*, the amount of time spent not speaking with prospective customers, reaches 84%. Even when the abandonment rate is 5%, the standard recommended by the Direct Marketing Association, sales agent down time can reach 84% during peak calling hours. (The figures above represent the actual rate of abandoned calls and not the abandonment rate set on *the* predictive dialer. In the above cases, the predictive dialer was set somewhere between 50% and 80%.) Therefore, if the American Exteriors were required by government regulation to maintain abandonment rates that were too low, the predictive dialer software would not be beneficial to American Exteriors, as a large amount of its operators' time would be spent idle to ensure operator availability when a live consumer was reached. Moreover, if predictive dialers were disallowed altogether, the amount down time of American Exteriors' sales agents would rise even higher. Given that an average of 11.4% of calls placed between 8 a.m. and 6 p.m. reach a live person and 13.9% of calls placed between 6 p.m. and 9 p.m. reach a live person, operators would spend a significant amount of time dialing calls by hand, waiting for the line to connect, and ascertaining whether they are speaking to a person or to an answering machine, and would reach far fewer potential customers if predictive dialing technology was either unavailable or ineffective due to stringent regulation.

12. Similarly, if American Exteriors were required by government regulation to set the length of time AMD had to make its determination at too low a setting, AMD technology would not be beneficial to American Exteriors. For example, when the AMD software is provided only 1-2 seconds in which to make its determination, American Exteriors sales agents spent a significant amount of time dispositioning the

one-half to two-thirds of answering machines relayed to agents as machines, thereby decreasing their level of efficiency, increasing labor costs to generate the same amount of sales, and increasing phone costs because the line remained connected for a longer time periods.

13. Because American Exteriors has no desire to alienate a potential customer, American Exteriors strictly complies with existing state and federal regulation. In addition to increasing the efficiency of American Exteriors operators, predictive dialing software helps American Exteriors to comply with state and federal regulations. Specifically, the software helps manage when calls are placed to customers (who are located in various time zones) to comply with time-of-day restrictions. The software also enables American Exteriors to avoid calling numbers on its company-specific do-not-call list maintained to comply with the TCPA and numbers on state no-call lists that American Exteriors must honor.

14. American Exteriors does business in Colorado, which has a do-not call list that prohibits businesses from contacting individuals who have placed their names on the list. American Exteriors' sales data indicates that individuals who place their names on no-call lists may be interested in specific products for which they have a need when contacted by a telemarketer. For example, of the 801,741 single-family detached homes with phones in Colorado, the primary customer base for American Exteriors, 300,880 or 37.5% placed their names on the Colorado do-not-call list in place on July 1, 2002. However, 364 (or 36%) of the 990 households to which American Exteriors sold products between January 1, 2002 and June 16, 2002 (before the

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Colorado no-call list took effect) purchased goods from American Exteriors after an American Exteriors operator cold-called the household.





**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
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Rules and Regulations Implementing	)	CG Docket No. 02-278
the Telephone Consumer Protection	)	
Act of 1991	)	
	)	

**COMMENTS OF THE AMERICAN TELESERVICES ASSOCIATION**

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**AFFIDAVIT OF STEVE BRUBAKER**

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I, STEVE BRUBAKER, do hereby attest as follows:

1. I am over 18 years of age and am competent to provide this Affidavit. The statements contained in this Affidavit are based on my personal knowledge.
2. I am Senior Vice-president of Telecommunications at InfoCision.
3. Telemarketing is a profession and lifetime career at InfoCision. Our agents have come to us for any number of reasons and from all walks of life. Many of them end up staying here longer than they ever expected. By listening to their stories it is easy to learn why. InfoCision offers them decent pay, benefits, and flexible hours. More importantly, however, many of our employees stay because they love their jobs—the work they do is personally rewarding. I wish to share the following anecdotes with

you. They have been related to me by some of our agents and are representative of the stories that many of our employees can tell.

4. Sue Kurtzman came to us with an education in laboratory sciences when she could not find work in her field. She has been with us for seven years now. InfoCision has afforded her the opportunity to put money away for her retirement, and is preparing to buy a home.

5. Dean D'Amico lost his prior job unexpectedly, and was hired on the spot when he interviewed with InfoCision. He intended only to stay until something better came along, but has been with us for three years now, and makes more money than he did at his last job.

6. Brenda Connelly has been with us for a year, and considers InfoCision a big part of her life. She has told me that she would not change her life for anything.

7. Frances Burns came to us for a better job, one that did not involve a factory or fast food. She has said that she provides a valuable service that benefits many people. Making calls on behalf of the American Red Cross and the American Cancer Society is important to her not just because it provides her a steady income, but because the calls help people suffering from terrible diseases.

8. Aaron Mershon was self-employed for years, and came to us to dig his way out of debt, and to take advantage of the many benefits our employees enjoy. He thought he would not stay long, but started to change his mind after only a month of work here. He now considers telemarketing to be his career, and InfoCision a part of his family.

9. Moira Demello, a fifty-three year old woman with a bad knee and bone spurs on her foot, came to us from a factory job where she would end every shift in incredible pain. She has said that her job at InfoCision has been a blessing because she earns a decent wage and has an improved quality of life.

10. Delores Fortson is a full-time nursing student, who enjoys the flexible hours that a telemarketing job offers.

11. Fred Kingsbury has been at InfoCision for over 10 years, and has enrolled in a Master's Degree program in political science as the result of telephone conversations he has had with customers and donors. He began as a part-time agent, and has recently been promoted to a supervisory position.

12. Joe Hubman has been a live-at-home dad for most of the past four years. He has found his efforts to raise money for the American Cancer Society and American Heart Association to be a rewarding way to make a difference in our society.

13. Michelle Patterson comes from a small town where the job market is nearly non-existent, with only a few plants, restaurants that pay minimum wage, and small businesses that rarely hire anyone. InfoCision has offered her a better way of life, one in which she no longer has to scrape to make ends meet.

14. Bev Thompson has worked in telemarketing for nearly fourteen years. As a single parent, telemarketing has enabled her to raise her son and help put him through four years of college.

15. When Amy Hudson started at InfoCision in 1993 as a single mother with three children (ages one, four, and five) she lived in low-income housing, was receiving several forms of public assistance, and worked in a factory at five dollars





November 8, 2002

Mr. Matt Mattingly  
Director of Government Affairs  
American Teleservices Assoc.  
1620 I Street NW  
Suite 615  
Washington, DC 20006

Dear Mr. Mattingly:

My name is Christine K. Gardner and I am a marketing representative for the West Virginia Development Office located in Charleston, West Virginia. I am writing you in regard to information that you requested from Nancy Korzeniewski with Infocision in Akron, Ohio.

The incentives for new business development include a "Super Tax Credit" on state business taxes and a direct loan program which offers less than market rate funds for fixed assets financing. Another outstanding incentive the state has to offer is the award-winning Governor's Guaranteed Work Force Program designed to train or retrain employees and to attract businesses by reducing start-up costs. While most other parts of the country are experiencing very tight labor markets, West Virginia has an abundant labor pool of highly dependable employees at the most competitive wage levels in the country.

West Virginia's geographic location offers excellent access for overnight delivery to two-thirds of the U.S. population and one-third of the Canadian population. This makes West Virginia an ideal location for just-in-time deliveries.

Per Ms. Korzeniewski's request, I have enclosed brochures and information that we send to potential prospects interested in expansion or locating to West Virginia. I welcome the opportunity to meet you and discuss this in person. Please feel free to contact me any time at **1-800-982-3386**. I look forward to hearing from you.

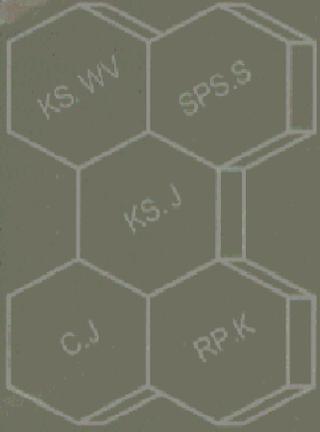
Sincerely,



Christine K. Gardner  
Manager, National Accounts

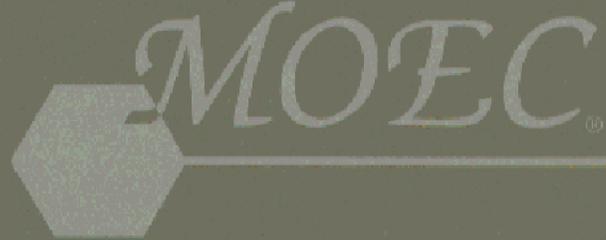
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Enclosures



**BFGoodrich**

**ADI** APPLIED DYNAMICS  
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WEST VIRGINIA DEVELOPMENT OFFICE

# GOVERNOR'S GUARANTEED WORK FORCE PROGRAM

ANNUAL REPORT FY 2001



THE MOUNTAINEER  
RACE TRACK & GAMING RESORT

