

Reconsideration Filing

Filed by: Jon T Hamilton, JHA Telemanagement, Inc.

On Behalf of: Beautyrock, Inc and JHA Telemanagement, Inc.

Docket#: 02-278

In modifying the TCPA of 1991 to match the TSR modified by the FTC in 2003, there have been some inconsistencies we believe need to be corrected. Specifically, we are asking for reconsideration of and clarification for the parts of the rule dealing with the abandonment rule and playing of a recorded message as part of the abandonment process. The FCC appears to have provided for an existing relationship exemption whereas the FTC's version does not.

Beautyrock, Inc. would like to point out the following:

- About 1 year ago, Beautyrock changed from simply abandoning calls when a Representative was not available to using on "on-hold" message, whereby a customer now gets a message that tells him/her who it is that is calling and asks them to hold for a few seconds.
- Beautyrock made this change simply because the company believes that any abandon rate is unacceptable. Abandons are rude, scare some more vulnerable people and are unnecessary from an efficiency point of view. The 3% rule does not fix the problem.
- Under the old 5% abandon industry guideline, the Company abandoned an average of 200,000 people per month. Using the "on-hold" message, they now abandon **no one!**
- On average, the wait time for a live representative is only 11 seconds. And, fewer than 3% of those who get the message hang up on it.
- Since instituting this system, the number of complaints about the message is so small as to be statistically uncountable. A greater number actually thank the caller for letting them know who was calling.
- This system puts the control in the hands of the consumer instead of the telemarketer. The customer knows who is calling and can decide to hold or hang up. Those who might have been frightened by an abandon no longer have cause for concern.
- Finally, if Beautyrock is forced to count these non-abandons as abandons, productivity will decrease by an average of 20% and this will increase costs to our customers and inevitably to the consumer.

We respectfully request that the FCC file with Congress a reconsideration request for the FTC to modify its rule to match that FCC's and exempt telemarketers who call existing customers, as defined by both the TCPA and TSR modifications, from counting an "on-hold message in the 3% abandonment calculation. [An "on-hold" message differs from the current language in that a Representative does get on the telephone in all cases within an average 11 seconds with a maximum of 30 seconds.]

We further request that every attempt be made by the Agencies to come to an agreement on this wording prior to implementation of the new and onerous wording is schedules to take effect. We believe that the Agencies have a mandate from Congress to make the two rules compatible and owe this duty to both business and consumers. Having two conflicting sets of rules is not an acceptable solution for either business or consumers.

Thank you for your reconsideration.

cc: The FTC – Eileen Harrington
The FCC – Margaret Egler, Richard Smith and Erica McMahon
The DMA – Jerry Cerasale and Mike Faulkner