Do-Not-Call Registry Fee Extension Act of 2007

Federal Trade Commission
Biennial Report to Congress
Reporting on Fiscal Years 2010-2011

I. Report Overview

In February of 2008, Congress passed the Do-Not-Call Registry Fee Extension Act of 2007 ("Fee Extension Act"),[1] requiring this biennial report on the National Do Not Call Registry ("Registry"). In compliance with the Fee Extension Act, this Report contains a summary of the current operations of the Registry, an update on changes that have been made in the FTC's maintenance and management of the Registry, and the impact of the established business relationship exception in our enforcement efforts.

The Registry currently has over 209 million active registrations. During fiscal year 2011, over 8 million more numbers were added to the Registry. Over 35,000 sellers, telemarketers, and exempt organizations subscribed to access the Registry, and over 3,000 of those entities paid fees totaling more than $13.7 million.

II. Introduction

The Registry has been in operation since the summer of 2003 and continues to be of great interest to consumers who continue to register, verify registration of numbers, and submit complaints of suspected violations at a steadily high rate. As technology and the telemarketing industry change, the FTC modifies its oversight procedures to ensure efficiency in its management of the Registry and accuracy of the Registry's content.

The Fee Extension Act required the FTC, in consultation with the Federal Communication Commission ("FCC") to first report to Congress on the Registry by December 31, 2009, and biennially thereafter. Specifically, the Fee Extension Act requires that the FTC's report provide the following information:

1) the number of consumers who have placed their telephone number(s) on the Registry;

2) the number of persons paying fees for access to the Registry and the amount of such fees;

3) the impact on the Registry of
   a) the five-year re-registration requirement;
   b) new telecommunication technology; and
   c) number portability and abandoned telephone numbers; and

4) the impact of the established business relationship exception on businesses and consumers.

This biennial Report provides an overview of the operation of the Registry for fiscal years 2010 and 2011.

III. Operation of the National Registry

On January 29, 2003, the FTC issued the final amendments to the Telemarketing Sales Rule ("TSR") that, *inter alia*, established the National Do Not Call Registry.[2] The Registry permits consumers to express their preferences not to receive certain telemarketing calls by placing their phone number(s) on a national registry by either calling a toll-free number from the telephone number(s) they wish to register, or using the do-not-call website (www.donotcall.gov). The process is fully automated, takes only a few minutes, and requires consumers to provide minimal personally identifiable information.[3]

Consumers also have the ability to verify their registration status and to remove their number(s) from the Registry. As is the case for registering a phone number, verifying a registration can be done either over the phone, by calling the toll-free number from the registered telephone number, or over the Internet. However, to delete a registered phone number from the Registry, consumers must call from the number that they want to remove. Not allowing deletions to be done online helps maintain the accuracy of the Registry by ensuring that a consumer's phone numbe

Five-Year Re-Registration Requirement

When the Registry was first implemented in 2003, registrations were scheduled to expire after five years. Out of concern that the expiration of numbers on the Registry would be detrimental to consumers, the FTC, in the fall of 2007, pledged not to drop any numbers from the Registry, pending final Congressional action.[14] The following February, Congress passed the DNCIA, eliminating the automatic removal of numbers from the Registry.

As the FTC stated in its testimony to Congress in 2007, the FTC's goal is to "balance the need to maintain a hig compile data regarding disconnected and reassigned wireless phone numbers so that they can be removed from the Registry.

VoIP service providers are also not required to share their directory assistance data. However, the subcontractor estimates that the national directory assistance data that it compiles contains approximately 75% of the VoIP numbers; thus, disconnection and reassignment information on a majority of VoIP numbers is included in the analysis used to determine what numbers should member of the household, but does remind consumers that they are registering on behalf of all household members.[21]

Consequently, the only numbers removed from the Registry are those that have been disconnected (or abandoned) and then reconnected to a different account holder at a different address. This process, which is performed monthly, ensures that numbers that have been ported are not removed, but numbers that have truly been abandoned are deleted.

VII. Impact of Established Business Relationship Exception on Consumers and Businesses

The TSR and the FCC rules contain exemptions that permit a seller or telemarketer to call a person who has listed his or her telephone numbers on the Registry if the call is to a person with whom the seller has an "established business relationship."[22] An established business relationship under the TSR and the FCC rules is a relationship based on (i) the consumer's purchase, rental, or lease of the seller's goods or services, or a financial transaction between the consumer and seller, within the 18 months immediately preceding the date of a telemarketing call; or (ii) a consumer's inquiry or application regarding a product or service offered by the seller within the three months immediately preceding the date of a telemarketing call.[23] This exception allows sellers and their telemarketers to call customers who have recently made purchases or made payments, and to return calls to prospective customers who have made inquiries, even if their telephone numbers are on the Registry.

Many businesses rely on this exemption to conduct telemarketing campaigns directed at recent or long-time customers, or consumers who have expressed an interest in becoming customers. Many consumers, however, perceive telemarketing calls that fall within this exemption to be inconsistent with the Registry because the consumers are unaware of the exception or are not aware that they have a relationship with the seller that falls within the definition of an established business relationship.

Such perceptions by consumers are especially likely when the relationship between the consumer and the seller arises from a brief, one-time transaction, or when the seller identified in the telemarketing call and the seller with whom the consumer has a relationship are part of the same legal entity, but are perceived by consumers to be different because they use different names or are marketing different products. Both the FTC and the FCC have stated that the issue of whether calls by or on behalf of sellers who are affiliates and subsidiaries of an entity with which a consumer has an established business relationship fall within the exception depends on consumer expectations. The FTC characterizes the issue as follows: "would consumers likely be surprised by that call and find it inconsistent with having placed their telephone number on the national 'do-not-call' registry?"[24]

For both the FTC and the FCC, the factors to be considered in this analysis include whether the subsidiary's or affiliate's goods or services are similar to the seller's, and whether the subsidiary's or affiliate's name is identical or similar to the seller's name. The greater the similarity between the nature and type of goods or services sold by the seller and any subsidiary

We publish an Annual DNC Databook that gives substantially more detail regarding registration numbers and other statistical information regarding the Registry. The 2011 Databook can be found at (http://www.ftc.gov/os/2011/11/111130dncdatabook.pdf). FTC staff continues to work closely with the contractor overseeing the Registry to ensure that the integrity of the Registry is maintained and that consumers' preferences not to receive telemarketing calls are honored.

ENDNOTES

1. Pub. L. No. 110-188, 122 Stat. 635 (2008).

2. 16 C.F.R. § 310.

3. In the case of registration by telephone, the only personal information provided is the telephone number to be registered. In the case of Internet registration, a consumer must provide, in addition to the telephone number(s) to be registered, a valid email address to which a confirmation email message can be sent. Once the confirmation is complete, however, the email address is encrypted and no longer usable. As of February 1, 2012, these encrypted email addresses will be purged annually.

4. In addition, phone numbers that have been disconnected and reassigned to new consumers at different addresses are removed from the Registry through a process the FTC monitors.

5. The TSR amendment prohibiting robocalls went into effect on September 1, 2009. *See* Telemarketing Sales Rule Final Rule Amendments, 73 Fed. Reg. 51164 (Aug. 29, 2008).

6. 16 C.F.R. § 310.4(c).

7. In addition to storing Registry complaints and information, the Consumer Sentinel Network contains millions of consumer complaints, including fraud and identity theft complaints, that can be accessed by law enforcement officials on their computers over a secure Internet connection.

8. These totals exclude those telephone numbers that have been deleted by consumers or eliminated as part of the FTC's removal process. A telephone number that was registered more than once between FY 2003 - FY 2011 is counted only once in these totals.

9. As established by the Fee Extension Act, in FY 2010-2011, the annual fee per area code was $55 (with the first five area codes provided at no cost) with the maximum annual fee for accessing the entire Registry being $15,058.

10. Such “exempt” organizations include entities that engage in outbound telephone calls to consumers that do not involve the sale of goods or services, such as calls to induce charitable

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