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Annual Report to Congress for FY 2005

Pursuant to the Do Not Call Implementation Act

on

Implementation of the National Do Not Call Registry

Submitted by

The Federal Trade Commission

I. Introduction

The National Do Not Call Registry is, by virtually every available measure, an effective consumer protection initiative. By the end of FY 2005, more than 107 million telephone numbers were registered, and the available data show that compliance with the National Do Not Call Registry provisions of the Amended Telemarketing Sales Rule (“TSR”)¹ is high and that, as a result, consumers are receiving fewer unwanted telemarketing calls.

The Do Not Call Implementation Act (“DNCIA”),² signed into law on March 11, 2003, mandates, *inter alia*, that the Federal Trade Commission (“FTC” or “Commission”) and the Federal Communications Commission (“FCC”) each transmit to Congress an annual report on the National Do Not Call Registry for fiscal years 2003 to 2007, inclusive. Specifically, the DNCIA requires that the FTC’s annual report provide the following information:

- (1) an analysis of the effectiveness of the registry;
- (2) the number of consumers who have placed their telephone numbers on the registry;
- (3) the number of entities paying fees to access the registry and the amount of such fees;
- (4) an analysis of the progress of coordinating the operation and enforcement of the National Registry with similar registries established and maintained by various States;
- (5) an analysis of the progress of coordinating the operation and enforcement of the National Registry with the enforcement activities of the FCC; and
- (6) a review of the FTC’s enforcement proceedings under the Telemarketing Sales Rule (“TSR”), 16 C.F.R. Part 310.

This Annual Report from the FTC provides an overview of the operation of the National Do Not Call Registry through the end of FY 2005.

II. Analysis of the Effectiveness of the National Do Not Call Registry

During FY 2005, the Commission used the following measures to judge the performance of the National Do Not Call Registry program:

- (1) ensuring that the system remained fully operational throughout the year;

¹ 16 C.F.R. Part 310.

² Pub. L. No. 108-10, 117 Stat. 557 (2003).

- (2) ensuring that the system could enroll large volumes of consumer telephone numbers; and
- (3) reducing unwanted telemarketing calls to consumers who sign up for the National Registry, which continues to be the ultimate goal of the registry.³

Each of these measures is discussed in turn below.

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³ When the National Do Not Call Registry was established, the Commission set out three separate measures by which the project's success could be judged: (1) having the system fully operational in calendar year 2003; (2) ensuring that the system could enroll approximately 60 million telephone numbers during the first year of operation; and (3) reducing unwanted telemarketing calls to consumers who sign up for the National Registry. See FTC Annual Report to Congress for FY 2003 and FY 2004 (Sept. 2005), <http://www.ftc.gov/reports/donotcall/051004dncfy0304.pdf>. These measures, as modified above, continue to serve as the means by which the Commission determines the effectiveness of the program.

fully automated, takes only a few minutes, and requires consumers to provide minimal personally identifying information.⁴

On September 2, 2003, the telemarketer component of the National Registry became available, as scheduled. Telemarketers and sellers can access registered telephone numbers, and pay the appropriate fee for that access, if any, through an Internet website dedicated to that purpose. The only information about consumers that companies receive from the National Registry is the registered telephone number. Those numbers are sorted and available for download by area code. Companies may also check a small number of telephone numbers at a time via interactive Internet pages.

In October 2003, the consumer complaint mechanism of the National Registry became operational.⁵ Consumers who receive unwanted telemarketing calls can register a complaint via either a toll-free telephone number, using an interactive voice response system, or via the Internet. To conduct investigations, law enforcement officials also can access data in the National Registry, including consumer registration information, telemarketer access information, and consumer complaints.

With the implementation of the consumer complaint mechanism, the National Registry became fully operational in October 2003. Since that time, the National Registry has been in continuous operation: providing consumers with the ability to register their preference not to receive telemarketing calls and file complaints; providing telemarketers with the ability to subscribe to the list, download registered telephone numbers, and request help; and providing thousands of law enforcement personnel with access to data maintained in the registry.

Ensuring that the System Can Enroll Large Volumes of Consumer Telephone Numbers

Since inception, the National Registry has time-and-again proven to be capable of handling massive numbers of consumer registration requests. Within four days of the initial launch, more than 10 million telephone numbers were registered. After the first 40 days of operation, more than 30 million numbers were registered. By the end of FY 2003, a mere 13

⁴ 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 e-mail address to which a confirmation e-mail message is sent. Once the confirmation is complete, however, the e-mail address is hashed and made unusable. Thus, only consumers' telephone numbers are maintained in the database.

⁵ Due to litigation brought by industry challenging the constitutionality of the National Do Not Call Registry, full registry operation was enjoined from late September until early October 2003. Ultimately, the constitutionality of the registry was upheld. See Mainstream Marketing Servs., Inc. v. FTC, 358 F.3d 1228 (10th Cir.), cert. denied, 543 U.S. 812 (2004).

⁶ See also Statement of Federal Trade Commission Chairman Deborah Platt Majoras on the 100 Millionth Number on the National Do Not Call Registry (Aug. 18, 2005), <http://www.ftc.gov/opa/2005/08/dncstatement.htm>.

⁷ In January 2004, Harris Interactive® surveyed nearly 3,400 adults and found that 92% of those who signed up for the National Registry had received fewer telemarketing calls since signing up, and 25% stated that they had received no telemarketing calls. Customer Care Alliance surveyed 850 adults nationwide between February and April 2004. In this survey, the 60% of respondents who had registered their primary home telephone number on the National Registry reported that they had experienced an 80% reduction in the volume of telemarketing solicitations since registration.

⁸ As the Commission stated in a letter to the Government Accountability Office in January 2005, “quantitative mea

In September 2005, the Customer Care Alliance performed a two-question follow-up study. The survey found that approximately 73% of those who responded to the poll had registered their primary home telephone number on the National Registry, a 19.7% increase in registrations from the prior year.⁹ In its December 2005 survey, Harris Interactive® found that 76% of all U.S. adults had registered for the National Registry compared to 57% in 2004, a one-third increase in registrations. The survey again found that 92% of U.S. adults who had placed their numbers on the registry reported receiving fewer telemarketing calls. These results provide further evidence that the National Registry continues to be an effective means for consumers to limit unwanted telemarketing calls - more consumers are registering their telephone numbers on the registry and fewer consumers are receiving unwanted telemarketing calls.

The National Registry

⁸ (...continued)

Director, Homeland Security and Justice, U.S. Government Accountability Office (Jan. 18, 2005.)

⁹ In the 2004 Customer Care Alliance survey, 61% of consumers reported that they registered their primary home telephone number on the National Registry.

¹⁰ Both the FY 2004 and 2005 totals represent the total number of unique telephone numbers that were registered at any time since inception. A telephone number that was registered in FY 2003 and again in FY 2004 or FY2005 is counted only once in these totals. A telephone number that was registered in FY 2003, FY 2004, or FY2005 but subsequently deleted or removed from the National Registry is also counted once in these totals. Of the total registrations during FY 2005, 301,716 were additional numbers transferred by States that added their State do not call registry data to the National Registry. In total, 11,594,559 numbers were
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IV. Number of Entities Paying Fees for Access to the National Do Not Call Registry During FY 2005

A total of 1,968 entities paid for access to the National Do Not Call Registry as of September 30, 2003. The total amount of fees paid in FY 2003 was \$5,238,900.¹¹ During FY 2004, a total of 7,734 entities paid fees totaling \$14,008,654 for access to the National Registry.¹² In FY 2005, a total of 6,794 entities paid fees totaling \$18,099,304 for access to the National Registry.¹³ Since inception, a total of 11,919 unique entities have paid fees for access to the National Registry. The total amount of fees paid by all entities since the inception of the National Registry through the end of FY 2005 is \$37,513,084.

Certain entities can access data from the National Registry without having to pay a fee. These include entities that access five or fewer area codes of data in a year, as well as entities that

¹⁰ (...continued)

transferred by States to the National Registry as of the end of FY 2005. This total includes the number of unique State records added to the National Registry. The numbers of records transferred by the States appearing in the previous edition of this report erroneously included duplicate state records. The correct figures for FY 2003 and FY 2004 are 9,110,889 and 2,181,954, respectively.

¹¹ Telemarketers could access the National Registry as of September 1, 2003. Accordingly, the fees paid in FY 2003 reflect only one month of operation. In FY 2003, the Commission imposed an annual fee of \$25 for each area code of data requested from the National Registry, with the first five area codes of data provided at no cost, and the maximum annual fee for accessing the entire National Registry was \$7,375. See 68 Fed. Reg. 45134 (July 31, 2003). These FY 2003 fees were in effect for the annual period beginning on September 1, 2003, and ending on August 31, 2004. Thus, the FY 2003 fees were in effect for the last month of FY 2003 and for eleven months of FY 2004.

¹² In 2004, the annual fee per area code was raised to \$40 (with the first five area codes again provided at no cost) and the maximum annual fee for accessing the entire National Registry was raised to \$11,000. See 69 Fed. Reg. 45580 (July 30, 2004). These FY 2004 fees were in effect for the annual period beginning on September 1, 2004, and ending on August 31, 2005. Thus, the FY 2004 fees were in effect for the last month of FY 2004 and for eleven months of FY 2005.

¹³ In 2005, the annual fee per area code was raised to \$56 (with the first five area codes again provided at no cost) and the maximum annual fee for accessing the entire National Registry was raised to \$15,400. See 70 Fed. Reg. 43273 (July 27, 2005). These FY 2005 fees were in effect for the annual period beginning on September 1, 2005, and ending on August 31, 2006. Thus, the FY 2005 fees were in effect for the last month of FY 2005 and will be in effect for eleven months of FY 2006.

are exempt from the do not call requirements of the Amended TSR, but that voluntarily access the National Registry in order to avoid calling consumers who do not wish to receive calls.¹⁴ In FY 2005, 58,023 entities accessed five or fewer area codes at no charge, and 1,233 entities claiming “exempt organization” status obtained free access.¹⁵

V. Analysis of Progress Coordinating the Operation and Enforcement of the National Do Not Call Registry with State Do Not Call Lists

At the time the FTC announced its intention to create a National Do Not Call Registry, more than two dozen States had some form of a do not call list. As noted in the Statement of Basis and Purpose for the Amended TSR,¹⁶ the FTC has worked diligently with the States to further the goal of creating a single National Do Not Call Registry. Such a National Registry allows consumers to effect their preference not to receive telemarketing calls by going to a single governmental agency and streamlines the process for businesses, allowing them to have a single point of contact to obtain the list of all consumer telephone numbers that they should not call.

The dialogue with States regarding coordination of do not call efforts continued throughout FY 2005. Since the inception of the program, seven States that had established State do not call lists have stopped collecting consumer registrations at the State level.¹⁷ Instead, they have relied upon the National Registry to enforce their State laws. Another ten States that did not have a State registry in place at the time enacted laws that “adopt” the National Registry as the State registry for State law purposes.¹⁸ In addition, eighteen States that operated or continue to operate do not call lists contributed their data to the National Registry, with over 11.5 million

¹⁴ Such “exempt” organizations include entities that engage in outbound telephone calls to consumers to induce charitable contributions, to raise funds for political purposes, or to conduct surveys. They also include entities engaged solely in calls to persons with whom they have an established business relationship or from whom they have obtained express written agreement to call, pursuant to the Amended TSR, 16 C.F.R. § 310.4(b)(1)(iii)(B)(i) or (ii), and who do not access the National Registry for any other purpose.

¹⁵ In FY 2004, 64,168 entities accessed five or fewer area codes at no charge, and 1,469 “exempt” entities obtained free access.

¹⁶ 68 Fed. Reg. 4580, 4638 (Jan. 29, 2003).

¹⁷ Those States are: Alabama; Connecticut; Kansas; Maine; New York; Oregon; and Vermont.

¹⁸ Those States are: Arizona; California; Illinois; Michigan; Montana; New Hampshire; Nevada; New Mexico; North Dakota; and South Dakota.

telephone numbers transferred by those States to the registry as of the end of FY 2005.¹⁹ As of the end of FY 2005, seven States still have not shared their state lists with the National Registry.²⁰

VI. Analysis of the Progress of Coordinating the Operation and Enforcement of the National Do Not Call Registry with the FCC

The FTC and the FCC have worked closely to coordinate their efforts to enforce the National Do Not Call Registry. Since inception of the program, the two agencies have worked closely together to (1) ensure efficient enforcement of their respective do not call rule provisions, (2) avoid unnecessary duplication of effort, and (3) promote cooperation in investigations. During FY 2005, coordination has continued with regular meetings to discuss issues pertaining to do not call enforcement, including review of the agencies' respective enforcement priorities. This close cooperation, in combination with active enforcement efforts at each of the agencies, has sent a strong message to industry regarding the FTC's and FCC's commitment to mandating compliance.

VII. Review of the FTC's Enforcement Proceedings

Although compliance with the National Do Not Call Registry has been high, the FTC actively investigates and prosecutes violators. National Do Not Call Registry enforcement protects the success of the National Registry in safeguarding consumer privacy. The FTC also works with its enforcement partners at the U.S. Department of Justice, the FCC, and the States to enforce the National Do Not Call Registry rules.

Violating the National Do Not Call Registry subjects telemarketers to civil penalties of up to \$11,000 per violation. Civil penalty actions are filed by the Department of Justice on behalf of the FTC. Some violators of the National Do Not Call Registry also engage in fraud or other law violations. Indeed, a few fy

¹⁹ The States that have transferred registrations to the National Registry are: Alabama; Arkansas; California; Colorado; Connecticut; Florida; Georgia; Idaho; Kansas; Kentucky; Massachusetts; Maine; Minnesota; Mississippi (provided data in FY 2005); New York; North Dakota; Oklahoma; and Pennsylvania.

²⁰ Those States are: Indiana, Louisiana, Missouri, Tennessee, Texas, Wisconsin, and Wyoming.

Enforcement of the do not call regulations in the Amended TSR could not begin until October 2003. However, in FY 2003 the FTC did file one matter related to the National Registry.

- Ken Chase allegedly misrepresented that, for a fee, he could arrange for consumers' telephone numbers to be placed on the National Registry.³⁴

As of September 30, 2005, the FTC had reached settlements in ten of these fourteen cases, obtaining injunctive relief in all ten cases. In four of the cases, the court ordered civil penalties totaling more than \$800,000. In the remaining six cases, the court ordered redress and/or disgorgement for other violations, totaling more than \$4.7 million.

VIII. Conclusion

Since inception of the program, the National Do Not Call Registry has been in continuous operation: successfully accepting consumer registrations and complaints; allowing businesses to obtain access to registry data; and providing law enforcement with the tools and information that they need to investigate complaints and bring enforcement actions. During FY 2005, the National Registry managed large volumes of consumer registrations without incident and, as of the end of the Fiscal Year, contained more than 107 million telephone numbers. To protect the ongoing success of the National Registry, the FTC continues to pursue an active enforcement program, with numerous ongoing non-public investigations, which, as of the end of FY 2005, have resulted in fourteen cases being filed, ten of which have settled, bringing significant relief to consumers. Even though the FTC pursues an active enforcement program, data from surveys and analysis of complaints about do not call violations strongly suggest that compliance with the National Do Not Call Registry provisions of the Amended TSR is high and that consumers are receiving fewer unwanted telemarketing calls.

³³ (...continued)

<http://www.ftc.gov/os/caselist/vectordirect/040629stipvectordirect.pdf>.

³⁴ FTC v. Ken Chase, No. C03-2139 (N.D. Cal., filed May 6, 2003). A stipulated permanent injunction was entered on December 8, 2003, which included an order to provide full refunds to consumers who subscribed to the defendant's services. A copy of this Stipulated Final Order for Permanent Injunction can be found on the FTC's website at <http://www.ftc.gov/os/2003/12/031209chasedncstip.pdf>.

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