Do-Not-Call Registry Fee Extension Act of 2007

Federal Trade Commission
Biennial Report to Congress
Reporting on Fiscal Years 2012-2013

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, the impact on the Registry of new telecommunication technologies, and the impact of the established business relationship exception in our enforcement efforts.

The Registry currently has over 223 million active registrations. During FY 2013, 5.8 million numbers were added to the Registry. Over 27,000 sellers, telemarketers, and exempt organizations subscribed to access the Registry, and 2,875 of those entities paid fees totaling more than $14.1 million.

II. Introduction

The Registry has been in operation since the summer of 2003.[2] Consumers continue to register their telephone numbers, verify registration of numbers, and submit complaints of suspected violations at a steadily high rate. The FTC continues to look for and make improvements to the system to better serve both consumers and telemarketers while maintaining the efficient management and accuracy of the Registry.

The Fee Extension Act required the FTC, in consultation with the Federal Communications 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;

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 FY 2012 and 2013.

fee. These include entities that access five or fewer area codes of data in a year, as well as exempt organizations (such as charitable organizations) that are not required to access the Registry to comply with do-not-call requirements under federal law, but voluntarily access the Registry to avoid calling consumers who do not wish to receive calls.[6] In FY 2012, 28,969 entities subscribed to access five or fewer area codes at no charge, and 631 entities claiming “exempt organization” status obtained free access. In FY 2013, 27,626 entities subscribed to access five or fewer area codes at no charge, and 598 entities claiming “exempt organization” status obtained free access.

VI. Impact on the National Registry of the Five-Year Re-Registration Requirement, New Telecommunications Technology, and Number Portability and Abandoned

New Telecommunications Technology

The FTC also continues to track how technology affects the Registry and the consumers and telemarketers who rely on it. A variety of new technologies has increased the number of illegal telemarketing calls made to telephone numbers on the Registry. For example, VoIP technology allows callers, including law-breakers, to make higher volumes of calls inexpensively from anywhere in the world. New technologies also allow illegal telemarketers to fake the caller ID information that accompanies their calls, which allows them to conceal their identity from consumers and law enforcement. Further, many telemarketers use automated dialing technology to make calls that deliver prerecorded messages (commonly referred to as "robocalls"), which allow violators to make very high volumes of illegal calls without significant expense. The net effect of these new technologies is that individuals and companies who do not care about complying with the Registry or other telemarketing laws are able to make more illegal telemarketing calls cheaply and in a manner that makes it difficult for the FTC and other law enforcement agencies to find them. As a result, consumer complaints about illegal calls – especially robocalls – have increased significantly in the last three years. In the fourth quarter of 2009, the FTC received approximately 63,000 complaints about illegal robocalls each month. That number ballooned in three years, to an average of approximately 200,000 complaints per month in the fourth quarter of 2012.

To combat the proliferation of illegal calls due to new technologies, FTC staff has aggressively sought new strategies to tackle the problem of unlawful robocalls by engaging in ongoing discussions with academic experts, telecommunications carriers, industry coordinating bodies, technology and security companies, consumers, and our counterparts at federal, state, and international government bodies. To that end, on October 18, 2012, the Commission hosted a public summit on robocalls to explore these issues (the "Robocall Summit"). In addition, the Commission recognized the need to spur the marketplace to develop technical solutions to combat the new technologies being abused by telemarketers placing illegal calls. Thus, at the conclusion of the Robocall Summit, the FTC announced its first public contest, a "Robocall Challenge" hosted on the challenge.gov platform, with a $50,000 prize for the individual or small team that could propose a technological solution to help consumers block robocalls on their landlines and mobile phones. The Commission also offered a separate non-cash award for the best solution by an organization with ten or more employees.

The primary goal of the Robocall Challenge was to encourage development of realistic ideas for decreasing the prevalence of robocalls, including illegal telemarketing and legal robocalls a consumer may not want, in a way that the FTC's traditional law enforcement efforts could not achieve alone. The FTC received an astounding 798 eligible submissions, many of which were extremely well-considered technical proposals. On April 2, 2013, the agency announced three winning solutions, all of which contained promising ideas about how to use technology to block illegal telemarketing calls from ever ringing consumers' phones. As the winning contestants and others further develop their ideas for introduction into the marketplace, we expect positive results for American consumers.

Number Portability and Abandoned Telephone Numbers

According to FCC regulations, people changing service providers in the same geographic area are able to retain their phone number.[10] As the FTC developed procedures to be used by our subcontractor for identifying numbers to remove from the Registry, we had to consider the need to identify these ported numbers and differentiate them from abandoned or disconnected numbers. To increase the likelihood that ported numbers are not removed but abandoned numbers are, the subcontractor must first identify the numbers in the compiled disconnection and reassignment data that have been designated as new connections. A number is designated as disconnected and reassigned for purposes of removing it from the Registry only if neither the name nor the address for the new account match the name or address associated with the previous account for that number.

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 truly have been abandoned are deleted.

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

The TSR and the FCC's 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."[11] 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.[12] 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 c 0 TD .0007 Tc when the4has a rela6lished business s

Telephone calls from telemarketers to phone numbers provided by lead generators generally do not fall within the established business relationship exception because, even if the consumers have a relationship with the lead generator, they do not have an established business relationship with the seller who has purchased the leads. Unless the consumer inquired into the services of a specified seller, or the lead generator made disclosures that would alert the consumer that he or she should expect telemarketing calls from the seller as a result of his or her communications with the lead generator, the seller cannot claim that it has a relationship with the consumer such that it can ignore the consumer's request not to receive telemarketing calls. In several enforcement actions, businesses that made telephone calls to consumers on the Registry after acquiring the consumers' names from a lead generator agreed to pay civil penalties to settle charges that their calls violated the TSR.[15]

Other businesses have sought to circumvent the Registry by utilizing sweepstakes entry forms as a way to exploit the established business relationship exemption, arguing that the submission of a sweepstakes entry form creates an established business relationship for purposes of the TSR. The TSR, however, does not permit companies to circumvent the Registry in this manner because a sweepstakes entry form does not create an established business relationship for purposes of the TSR. Companies have agreed to pay civil penalties for making illegal calls that relied upon sweepstake entry forms as a basis for making telemarketing calls.[16]

ENDNOTES

1991, CG Docket No. 02-278, Report and Order, 27 FCC Rcd 1830, 1845-47, ¶¶ 35-43 (2012).

12. *See United States v. Columbia House Co.*, Civ. No. 05C-4064 (N.D. Ill. filed July 14, 2005). In this case, the company agreed to a settlement after the FTC's analysis found that its telemarketers continued to call former customers after the 18-month period provided by the established business relationship exemption had expired.

13. 68 Fed. Reg. at 4594. *See also* 47 C.F.R. § 64.1200(f)(5)(ii) (under the FCC's rules, a consumer's "established business relationship with a particular business entity does not extend to