

Do-Not-Call Registry Fee Extension Act of 2007

Federal Trade Commission Biennial Report to Congress Reporting on Fiscal Years 2018-2019

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 239 million active registrations. During FY 2019, the Registry increased by more than 4.1 million phone numbers. Over 15,000 sellers, telemarketers, and exempt organizations subscribed to access the Registry in FY 2019, and 2,014 of those entities paid fees totaling more than \$12 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 high rate. During the last 14 years, the Registry has also successfully served businesses, as they accessed the Registry, and law enforcement, as they investigated violations of the Do Not Call rules. The FTC continues to look for and make improvements to the system to better serve consumers, telemarketers, and law enforcers while maintaining the efficient management and accuracy of the Registry. FTC staff continues to work closely with the contractor overseeing the Registry to ensure that the integrity of the Registry is maintained.

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:

- the number of consumers who have placed their telephone number(s) on the Registry;
- the number of persons paying fees for access to the Registry and the amount of such fees;
- the impact on the Registry of
 - the five-year re-registration requirement;

from numbers that are listed on “Do Not Originate” lists, such as government telephone numbers that are not used for outbound telephone calls. On June 6, 2019, the FCC issued a declaratory ruling permitting voice service providers to block calls as a default setting, as long as their customers are informed and offered the opportunity to opt out of the blocking.¹⁸ These new rules and this declaratory ruling allow voice service providers to block calls without running afoul of the FCC’s call completion rules.

Following its 2017 and 2019 actions that allow the blocking of calls that are likely to be illegal, the FCC is currently conducting a rulemaking in which it is considering the means by which voice service providers may block robocalls that are likely to be illegal. The FCC has also ordered the creation of a Reassigned Numbers Database, which will enable callers to determine whether numbers they wish to call have been disconnected since they obtained consent, and therefore whether the consent they have to call each number remains valid.

Second, the FCC has also worked with the industry-led Robocall Strike Force, which

complaint intake process to provide a drop-down list of possible call categories for consumers to choose from to make it easier for consumers to report the topic of the call and to help the FTC and FCC identify trends. The top six topics selected by consumers are the same for Do Not Call complaints and robocall complaints:

- Reducing your debt (credit cards, mortgage, student loans)
- Dropped call or no message
- Vacation & timeshares
- Warranties & protection plans
- Calls pretending to be government, businesses, or family and friends
- Medical & prescriptions

C. Number Portability and Abandoned Telephone Numbers

According to FCC regulations, people changing service providers are able to retain their phone number.²⁰ As the FTC developed procedures to identify numbers to remove from the Registry, the FTC considered how 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 FTC's contractor first identifies the numbers that have been designated as new connections in the compiled disconnection and reassignment data. 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 Accor(nod4a (s 7h

that sellers and telemarketers have the burden of proof to demonstrate the existence of an established business relationship.²³ Under the TSR, the relationship must be directly “between a seller and a consumer.”²⁴

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 do not realize 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

same lubsidiari arya

Telephone calls from telemarketers to phone numbers provided by lead generators generally do not fall within the established business relationship exception because, while the consumers *may* 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.²⁸

Other businesses have sought to circumvent the Registry by utilizing sweepstakes entry forms as a way to exploit the established business relationship exemption, arguing c-9.1 (ua2 (uo2t1Ts rela(oCI

ENDNOTES

1. Pub. L. No. 110-188, 122 Stat. 635 (2008) *as codified at* 15 U.S.C. § 6154.
2. 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. 16 C.F.R. § 310.
3. These totals exclude those telephone numbers that have been deleted by consumers or eliminated as part of the FTC’s process for removing disconnected and reassigned numbers from the Registry. A telephone number that was registered more than once between FY 2003 - FY 2015 is counted only once in these totals.
4. As established by the Fee Extension Act, in FY 2017, the annual fee per area code was \$61 (with the first five area codes provided at no cost) with the maximum annual fee for accessing the entire Registry being \$16,714.
5. 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 contributions, to raise funds for political purposes, or to conduct surveys. They also include entities who are 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)(1) or (2), and who do not access the Registry for any other purpose.
6. See FTC Press Release, *FTC Pledges Not to Drop Any Numbers From Do Not Call Registry, Pending Final Congressional or Agency Action on Whether to Make Registration Permanent* (Oct. 23, 2007), available at <http://www.ftc.gov/opa/2007/10/dnctestimony.shtm>.
7. Pub. L. No. 110-187, 122 Stat. 633 (2008).
8. See *FTC v. Educare Centre Services, Inc.*, No. 3:19-cv-00196-KC (W.D. Tex. Am. Compl. Filed Dec. 2, 2019).
9. See Press Release, *FTC Announces Robocall Challenge Winners; Proposals Would Use Call Filter Software to Reduce Illegal Calls* (Apr. 2, 2013), available at <http://www.ftc.gov/opa/2013/04/robocall.shtm>.
10. See <https://www.nomorobo.com/> (last visited Oct. 12, 2017) and Robocall Strike Force, *Robocall Strike Force*, available at <https://www.nomorobo.com/> (last visited Oct. 12, 2017).

announces-winners-zapping-rachel-robocall-contest.

12. See Fed. Trade Comm'n, DetectaRobo, <https://www.ftc.gov/detectarobo> (last visited June 2, 2015); Press Release, FTC Announces New Robocall Contests to Combat Illegal Automated Calls (Mar. 4, 2015), available at <https://www.ftc.gov/news-events/press-releases/2015/03/ftc-announces-new-robocall-contests-combat-illegal-automated>.

13. See Fed. Trade Comm'n, Robocalls: Humanity Strikes Back, <https://www.ftc.gov/strikeback>; Press Release, FTC Announces New Robocall Contests to Combat Illegal Automated Calls (Mar. 4, 2015), available at <https://www.ftc.gov/news-events/press-releases/2015/03/ftc-announces-new-robocall-contests-combat-illegal-automated>.

14. Press Release, FTC Awards \$25,000 Top Cash Prize for Contest-Winning Mobile App That Blocks Illegal Robocalls (Aug. 17, 2015), available at <https://www.ftc.gov/news-events/press-releases/2015/08/ftc-awards-25000-top-cash-prize-contest-winning-mobile-app-blocks>.

15. For example, in late 2016, AT&T launched “Call Protect,” which is a product available to many AT&T wireless customers that blocks fraud calls and flags others as potential “spam.” See http://about.att.com/story/att_call_protect.html. T-Mobile offers its wireless customers two free products, “Scam ID” and “Scam Block”, that flag and block unwanted calls. See <http://explore.t-mobile.com/callprotection> (last visited Sept. 22, 2017). Verizon offers a product called “Caller Name ID” to its wireless customers that also attempts to flag and block unwanted calls. See <https://www.verizonwireless.com/solutions-and-services/caller-name-id/>. In addition, a number of carriers make Nomorobo available to their VoIP or cable line customers. See, e.g., <https://www.fcc.gov/consumers/guides/stop-unwanted-calls-texts-and-faxes> (listing available call blocking resources from a number of wireline providers) (last visited Sept. 22, 2017).

16. The Cellular Telecommunications Industry Association (CTIA) maintains a list of some of the available call blocking apps, both for iOS devices (<https://www.ctia.org/consumer-tips/robocalls/ios-robocall-blocking>) and for Android devices (<https://www.ctia.org/consumer-tips/robocalls/android-robocall-blocking>) (last visited Sept. 22, 2017).

17 See Pairing Government Data with Private-Sector Ingenuity to Take on Unwanted Calls, available at <https://strategy.data.gov/proof-points/2019/06/21/pairing-g>See

20. 47 C.F.R. § 52.21(m) and § 52.23.

21. 16 C.F.R. § 310.4(b)(1)(iii)(B)(2) and § 310.2(q). The FCC's rules similarly include an exemption for live-voice calls to consumers with whom the seller has an established business relationship. *See* 47 C.F.R. § 64.1200(c)(2), (f)(5), and (f)(14)(ii). These exemptions do not apply if the person has asked to be on the seller's "entity-specific" do-not-call list by telling the seller or its representatives that he or she does not wish to receive telemarketing calls from the seller. *See id.* § 64.1200(f)(5)(i). The FCC eliminated the established business relationship exemption that applied to prerecorded telemarketing calls to residential lines, effective October 16, 2013. *See Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02-278, Report and Order, 27 FCC Rcd 1830, 1845-47, paras. 35-43 (2012).

22. *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.

23. 16 C.F.R. § 310.4(b)(1)(iii)(B)(2).

24. 16 C.F.R. § 310.2(q).

25. *See* Statement of Basis and Purpose for Final Amended Telemarketing Sales Rule, 68 Fed. Reg. 4580, 4594 (Jan. 29, 2003). *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 affiliated entities unless the [consumer] would reasonably expect them to be included").

26. *See* Complying with the Telemarketing Sales Rule, at <http://www.ftc.gov/bcp/edu/pubs/business/marketing/bus27.shtm>. Similarly, the FCC has stated that "affiliates fall within the established business relationship exemption only if the consumer would reasonably expect them to be included given the nature and type of goods or services offered and the identity of the affiliate." *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02-278, Report and Order, 18 FCC Rcd 14014, 14082-83, para. 117 (2003).

27. *See U.S. v. Consumer Education.info, Inc.*, 1:16-cv-02692 (D. Col. filed Nov. 1, 2016), available at <https://www.ftc.gov/enforcement/cases-proceedings/152-3081/consumer-educationinfo-inc>.

28. *See FTC v. Career Education Corp. et al.*, No. 1:19-cv-05739 (N.D. Ill. filed Aug. 27, 2019); *United States v. Versatile Mktg. Sols., Inc. et al.*, No. 1:14-cv-10612-PBS (D. Mass. filed Mar. 10, 2014); *United States v. Central Florida Investments, Inc.*, Civ. No. 6:09-cv-00104-PCF-GJK (M.D. Fla. filed Jan. 15, 2009); *United States v. Ameriquest Mortgage Company*, Civ. No.

8:07-cv-01304-CJC-MLG (C.D. Cal. filed Nov. 6, 2007).

29. See *United States v. Electric Mobility Corporation*, No. 1:11-cv-2218-RMB-KMW (D.N.J. filed April 19, 2011); *United States v. All in One Vacation Club, L.L.C.*, No. 6:09-cv-103-Orl-31DAB (M.D. Fla. filed Jan. 14, 2009); *United States v. Craftmatic Industries, Inc.*, 2:07-cv-04652-LDD (E.D. Pa. filed Nov. 6, 2007).

30. <https://public.tableau.com/profile/federal.trade.commission#!/vizhome/DoNotCallComplaints/Maps>.

