

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)
)
Rules and Regulations Implementing the) CG Docket No. 02-278
Telephone Consumer Protection Act of 1991)

ANNUAL REPORT ON THE NATIONAL DO-NOT-CALL REGISTRY

Adopted: September 16, 2005

Released: September 16, 2005

By the Chief, Consumer & Governmental Affairs Bureau:

I. INTRODUCTION

1. In this item, the Federal Communications Commission (FCC or Commission) reports to Congress on the National Do-Not-Call Registry for fiscal year 2004, as required by the Do-Not-Call Implementation Act (Do-Not-Call Act).¹

II. BACKGROUND

2. On March 11, 2003, President Bush signed the Do-Not-Call Act, authorizing the Federal Trade Commission (FTC) to collect fees for the implementation and enforcement of a national do-not-call registry. In addition, the Do-Not-Call Act required the FCC to issue final rules in its ongoing rulemaking proceeding under the Telephone Consumer Protection Act (TCPA)² within 180 days of the Do-Not-Call Act's enactment and to consult and coordinate with the FTC to maximize consistency with the rule promulgated by the FTC in 2002.³ The Do-Not-Call Act also requires the FCC to transmit an annual report to Congress on the status of the national "do-not-call" registry for each of fiscal years 2003 through 2007.⁴

3. On July 3, 2003, the FCC released a Report and Order (*Report and Order*) revising the rules on telemarketing in compliance with the requirements of the Do-Not-Call Act.⁵ The *Report and*

¹ Do-Not-Call Implementation Act, Pub. L. No. 108-10, 117 Stat. 557 (2003), *codified at* 15 U.S.C. § 6101 (Do-Not-Call Act). This report reflects activity from October 1, 2003 through September 30, 2004.

² Telephone Consumer Protection Act of 1991, Pub. L. No. 102-243, 105 Stat. 2394 (1991), *codified at* 47 U.S.C. § 227. The TCPA amended Title II of the Communications Act of 1934, 47 U.S.C. § 201 *et seq.*

³ Do-Not-Call Act, 15 U.S.C. § 6101 at Sec. 3 (referring to FTC rule 16 C.F.R. § 310.4(b)).

⁴ Do-Not-Call Act, 15 U.S.C. § 6101 at Sec. 4 (b). The FCC transmitted a report to Congress for fiscal year 2003 on December 15, 2003. *See Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02-278, Annual Report on the National Do-Not-Call Registry, 19 FCC Rcd 24002 (2004).

⁵ *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02-278, Report and Order, 18 FCC Rcd 14014 (2003) (*Report and Order*). The Commission delegated its authority to the Consumer & Governmental Affairs Bureau to issue the Reports to Congress. *Report and Order*, 18 FCC Rcd at 14142, para. 217.

Order revised the existing TCPA rules and adopted new rules to provide consumers with several options for avoiding unwanted telephone solicitations. Specifically, the *Report and Order* established, together with the FTC, a national do-not-call registry for consumers who wish to avoid unwanted telemarketing calls.⁶ The national do-not-call registry covers all entities that use the telephone to advertise, including those entities over which the FTC lacks jurisdiction, such as common carriers, banks, credit unions, savings and loans, airlines, and companies in the business of insurance.⁷

4. The FCC and FTC jointly implemented a nationwide do-not-call registry following the adoption of rules by each agency to protect consumers from unwanted telemarketing calls.⁸ The FTC received funding to set up and administer the do-not-call registry, while both the FCC and FTC are responsible for enforcement of the do-not-call rules, along with the states.⁹ Telemarketers are required to pay fees to access the database and to “scrub” their calling lists of the telephone numbers in the database.¹⁰

5. The opening of the National Do-Not-Call Registry was announced on June 27, 2003.¹¹ Within the first three days of the registry’s operation, consumers registered more than 10 million telephone numbers. The number of registered telephone numbers has grown to over 88 million today.

6. Pursuant to the requirements of the Do-Not-Call Act, this Report contains an analysis of the “do-not-call” program established by the FCC and FTC as of September 30, 2004 (FY2004). This report is submitted in accordance with Section 4(b) of the Do-Not-Call Act.¹² Section 4(b) states:

(b) ANNUAL REPORT.—For each of fiscal years 2003 through 2007, the Federal Trade Commission and the Federal Communications Commission shall each transmit an annual report to the Committee on Energy and Commerce of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report which shall include--

- (1) an analysis of the effectiveness of the “do-not-call” registry as a national registry;
- (2) the number of consumers who have placed their telephone numbers on the registry;

⁶ See *Report and Order*, 18 FCC Rcd at 14034-65, paras. 28-85.

⁷ See *Report and Order*, 18 FCC Rcd at 14034, para. 27.

⁸ See 47 C.F.R. § 64.1200 *et seq.* and 16 C.F.R. Part 310.

⁹ See generally Do-Not-Call Act, 15 U.S.C. § 6101; see also Consolidated Appropriations Resolution of 2003, Pub. L. 108-7, enacted Feb. 21, 2003 (authorizing the FTC to collect fees sufficient to implement and enforce the “do-not-call” provisions of the Amended Telemarketing Sales Rule); 47 U.S.C. § 227(f).

¹⁰ “Scrubbing” refers to comparing a do-not-call list to a company’s call list and eliminating from the company call list the telephone numbers of consumers who have registered a desire not to be called. Starting January 1, 2005, telemarketers were required to access the registry and scrub their call lists every 31 days, rather than every three months. See *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02-278, Order, 19 FCC Rcd 19215 (2004).

¹¹ See *National Do Not Call Registry Opens*, Federal Trade Commission news release, June 27, 2003 at <http://www.ftc.gov/opa/2003/06/donotcall.htm>.

¹² See Do-Not-Call Act, 15 U.S.C. § 6101 at Sec. 4(b).

- (3) the number of persons paying fees for access to the registry and the amount of such fees;
- (4) an analysis of the progress of coordinating the operation and enforcement of the “do-not-call” registry with similar registries established and maintained by the various States;
- (5) an analysis of the progress of coordinating the operation and enforcement of the “do-not-call” registry with the enforcement activities of the Federal Communications Commission pursuant to the Telephone Consumer Protection Act (47 U.S.C. 227 et seq.); and
- (6) a review of the enforcement proceedings under the Telemarketing Sales Rule (16 CFR 310), in the case of the Federal Trade Commission, and under the Telephone Consumer Protection Act (47 U.S.C. 227 et seq.), in the case of the Federal Communications Commission.

III. THE NATIONAL DO-NOT-CALL REGISTRY

A. Effectiveness of the Do-Not-Call Registry

7. On October 1, 2003, the National Do-Not-Call Registry went into effect, and telemarketers were prohibited from contacting numbers on the list unless the calls were exempted under the rules.¹³ The registry was adopted in large part to make it easier and more efficient for consumers to prevent unwanted telemarketing calls. Consumers can add their wireline and wireless telephone numbers to the registry either online (www.donotcall.gov) or by calling a toll-free telephone number 1-888-382-1222, TTY 1-866-290-4236. Registration lasts for five years or until a number is disconnected or the consumer takes it off the registry.¹⁴ A consumer may re-register a number at the end of the five-year registration period.¹⁵ By the end of fiscal year 2004, about 62 million telephone numbers were placed in the registry by consumers, most of whom used the online method.¹⁶

8. While it is difficult to measure the effectiveness of the registry, we believe the number of telephone numbers added to the registry and the FCC’s experience in both helping to ensure compliance with the registry and in enforcing the do-not-call rules are strong indicators that the registry has been successful in curbing the number of unwanted telemarketing calls. As noted below, the registry now includes over 88 million telephone numbers. The FCC and FTC’s websites provide guidance to

¹³ The Commission explained that calls that do not fall within the definition of “telephone solicitation” as defined in section 227(a)(3) are not restricted by the national do-not-call list. These include surveys, market research, political and religious speech calls. The national do-not-call rules also do not prohibit calls by or on behalf of tax-exempt nonprofit organizations, calls to persons with whom the seller or telemarketer has an established business relationship, calls to businesses, and calls to persons with whom the marketer has a “personal relationship.” See *Report and Order*, 18 FCC Rcd at 14039-40, para. 37.

¹⁴ See 47 C.F.R. § 64.1200(c)(2); *Report and Order*, 18 FCC Rcd at 14036-37, para. 31.

¹⁵ See *Report and Order*, 18 FCC Rcd at 14036-37, para. 31.

¹⁶ According to the FTC, of the 62 million registered telephone numbers, 61 percent were registered from the do-not-call website, 22 percent were registered using the toll-free telephone number, and 17 percent came from state downloads. See United States Government Accountability Office, Report to Congressional Committees, *TELEMARKETING: Implementation of the Do-Not-Call National Registry*, January 2005 at 13.

consumers on how to register and how to file complaints regarding violations of the do-not-call rules.¹⁷ Telemarketers also are provided with instructions on how to access the registered telephone numbers and information describing their compliance obligations. On the day after the registry went into effect, the Commission announced the creation of a special Do-Not-Call Enforcement Team to enforce the telemarketing rules.¹⁸

9. In addition, two polls taken by Harris Interactive and the Customer Care Alliance strongly suggest that the national registry has resulted in a reduction of unwanted telemarketing calls.¹⁹ In a survey released in February of 2004, Harris Interactive found that 92 percent of those who signed up for the registry had fewer telemarketing calls, and 25 percent of those registered indicated they had received no telemarketing calls since signing up.²⁰ In June 2004, a Customer Care Alliance telephone survey also illustrated widespread consumer satisfaction with the Do-Not-Call Registry.²¹ Customer Care Alliance reported that 60 percent of the consumers surveyed said they had registered, and 87 percent of those who had signed up for the national registry had received fewer calls.²² This survey also attempted to quantify changes in the volume of unsolicited calls registered consumers had received since signing-up, reporting an 80 percent reduction.²³

10. Consumer complaint information may also provide some indication of the national registry's success. As noted in a recent study by the Government Accountability Office (GAO), by December 11, 2004, just over 675,000 complaints had been filed directly with the do-not-call registry since the FCC and FTC began accepting complaints in October 2003.²⁴ This is about 1 percent of the total number of telephone numbers registered.²⁵

B. Number of Consumers Registered on the Do-Not-Call Registry

11. From October 1, 2003 through September 30, 2004, an additional 13,716,200 telephone numbers had been placed on the national do-not-call registry.²⁶

¹⁷ See <http://www.fcc.gov/cgb/donotcall/> and <http://www.ftc.gov/bcp/online/edcams/donotcall/index.html>.

¹⁸ See *FCC Establishes Special Do-Not-Call Enforcement Team*, FCC news release, October 2, 2003.

¹⁹ See http://www.harrisinteractive.com/harris_poll/index.asp?PID=439 and <http://www.ccareall.org/read.html#callist>.

²⁰ Harris Interactive conducted its on-line poll within the United States between January 19 and 28, 2004, among 3,378 adults nationwide. See http://www.harrisinteractive.com/harris_poll/index.asp?PID=439.

²¹ Customer Care Alliance is a consortium of companies that provides, among other things, services for clients to assess consumer satisfaction with their products. The company conducted its do-not-call national registry telephone survey of 851 people from February through April 2004. See *National Do Not Call Registry Celebrates One-Year Anniversary*, FTC news release, June 24, 2003, at <http://www.ftc.gov/opa/2004/06/dncanny.htm>.

²² See *National Do Not Call Registry Celebrates One-Year Anniversary*, FTC news release, June 24, 2003, at <http://www.ftc.gov/opa/2004/06/dncanny.htm>.

²³ *Id.*

²⁴ United States Government Accountability Office, Report to Congressional Committees, *TELEMARKETING: Implementation of the Do-Not-Call National Registry*, January 2005 at 15.

²⁵ The FTC also noted that for complaints filed between October 2003 and June 2004, there were more than 130,000 company names against which complaints were lodged. Only about 200 of those had 100 or more complaints each. See *National Do Not Call Registry Celebrates One-Year Anniversary*, FTC news release, June 24, 2003, at <http://www.ftc.gov/opa/2004/06/dncanny.htm>.

²⁶ There are now over 88 million telephone numbers registered on the national do-not-call list.

C. Number of Telemarketers Accessing the Do-Not-Call Registry

12. On September 2, 2003, telemarketing organizations were given access to the national do-not-call registry.²⁷ At that time, the annual cost for organizations to access phone numbers in the registry was \$25 per area code, with the first five area codes provided at no cost.²⁸ To access numbers for the entire country, including U.S. territories, the maximum annual fee was \$7,375.²⁹ The FTC raised the fee amount starting September 1, 2004 to \$40 per area code of data, with a maximum annual fee of \$11,000 for the entire U.S. database.³⁰ We refer the Committee to the report transmitted by the FTC for the number of persons paying fees for access to the registry and the amount of such fees.

D. Coordination with the State Do-Not-Call Registries

13. In the FCC's 2003 *Report and Order*, the Commission explained that the most efficient way to create a single national database would be to download the existing state registrations into the national database.³¹ The national database was designed to allow the states to download into the national registry — at no cost — the telephone numbers of consumers that have registered with their state do-not-call lists.³² The Commission noted that a reasonable transition period may be required to incorporate the state registrations in a few states into the national database.³³ The Commission therefore adopted an 18-month transition period for states to download their state lists into the national database.

14. As of the end of fiscal year 2004, 17 of 25 states that maintain their own do-not-call lists had downloaded into the national registry the telephone numbers of consumers on their do-not-call lists.³⁴

E. Coordination with the FTC on Operation and Enforcement of the Registry

15. The FCC and FTC began enforcing the provisions of the national registry on October 1, 2003 — the beginning of fiscal year 2004.³⁵ In the *Report and Order*, the Commission explained that the FTC's adoption of a nationwide do-not-call registry, along with the Commission's adoption of requirements that maximize consistency with those adopted by the FTC, create an overlap in federal regulations governing telemarketing activities.³⁶ The FCC and FTC jointly developed a Memorandum of

²⁷ See *National Do Not Call Registry to Be Available to Telemarketers Beginning September 2, 2003*, FTC news release, August 27, 2003 at <http://www.ftc.gov/opa/2003/08/tmkraccess.htm>.

²⁸ See *Telemarketing Sales Rule Fees*, Federal Trade Commission, Final Rule, 60 Fed. Reg. 45134-45144 (July 31, 2003).

²⁹ *Id.*

³⁰ See *Telemarketing Sales Rule Revised Fees*, Federal Trade Commission, Final Rule, 69 Fed. Reg. 45580-45586 (July 30, 2004).

³¹ See *Report and Order*, 18 FCC Rcd at 14060-61, paras. 76-77.

³² See *Report and Order*, 18 FCC Rcd at 14060-61, para. 77.

³³ *Id.*

³⁴ The 17 states, as identified by the FTC, are Alabama, Arkansas, California, Colorado, Connecticut, Florida, Georgia, Idaho, Kansas, Kentucky, Maine, Massachusetts, Minnesota, New York, North Dakota, Oklahoma and Pennsylvania. According to the FTC, eight states do not share their registries with the national registry—Indiana, Louisiana, Mississippi, Missouri, Tennessee, Texas, Wisconsin and Wyoming. See United States Government Accountability Office, Report to Congressional Committees, *TELEMARKETING: Implementation of the Do-Not-Call National Registry*, January 2005 at 8.

³⁵ See *Report and Order*, 18 FCC Rcd at 14143, para. 222; see also *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Final Rule, 68 Fed. Reg. 44144 (July 25, 2003).

³⁶ *Report and Order*, 18 FCC Rcd at 14138, para. 211.

Understanding to achieve an efficient and effective enforcement strategy that will promote compliance with federal telemarketing regulations.³⁷ The Memorandum of Understanding established both commissions' intent to work together in a cooperative and coordinated fashion to implement efficient and non-redundant enforcement of federal telemarketing statutes and rules.³⁸ The FCC and FTC agreed that: 1) the commissions would meet at least quarterly to discuss matters of mutual interest; 2) the FTC would provide the FCC with national registry information through the Consumer Sentinel system; 3) the commissions would make available to each other consumer complaints regarding possible violations of federal telemarketing rules; 4) the commissions would endeavor to avoid unnecessarily duplicative enforcement actions; 5) the commissions would engage in joint enforcement actions, when necessary, that are appropriate and consistent with their respective jurisdictions; 6) the commissions would coordinate public statements on joint cases; and 7) the MOU was to remain in effect until modified by mutual consent of both parties or terminated by either party upon 30 days advance written notice.³⁹ For reasons of efficiency and fairness, the FCC and FTC will continue to closely coordinate to avoid unnecessarily duplicative enforcement actions.

F. FCC Enforcement Proceedings

16. As noted above, the national do-not-call registry rules became effective on October 1, 2003.⁴⁰ As of September 30, 2004, the Commission had initiated 93 investigations into companies against whom allegations of unlawfully calling consumers on the national registry had been made. In addition, the Commission had issued 15 citations for violations of the national registry and entered into two consent decrees settling investigations of alleged violations of the national registry. The table below summarizes the FCC's enforcement actions as of September 30, 2004.

Date of Action	Company Name	No. of Complaints	States where affected consumers located	Type of enforcement action taken
1. Sept. 16, 2004	Envision Mortgage Services, Inc.	13	California	Warning letter/citation sent to company.
2. Sept. 7, 2004	Primus	98	California, Connecticut, Florida, Georgia, Illinois, Maryland, Massachusetts, Michigan, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Puerto Rico, Tennessee, Texas,	Consent decree settlement--\$400,000 voluntary payment and implementation of compliance plan.

³⁷ *Id.*

³⁸ FCC-FTC Memorandum of Understanding: Telemarketing Enforcement (Dec. 2003).

³⁹ *Id.* To date, the FCC and FTC staffs have met and conferred frequently on enforcement matters of mutual interest, as contemplated by the Memorandum of Understanding, and have otherwise carried out the provisions of the MOU when warranted.

⁴⁰ See *Report and Order*, 18 FCC Rcd at 14143, para. 222; see also *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Final Rule, 68 Fed. Reg. 44144 (July 25, 2003).

			and Virginia	
3. July 6, 2004	BLS Funding	31	Arizona, California, Colorado, Connecticut, Florida, Illinois, Maryland, Massachusetts, Michigan, New Mexico, New Jersey, and Virginia	Warning letter/citation sent to company.
4. July 2, 2004	See Through Windows & Doors LLC	123	Maryland and Virginia	Warning letter/citation sent to company.
5. June 4, 2004	Planet Mortgage Corporation	42	California	Warning letter/citation sent to company.
6. May 28, 2004	Fresh Start Financial	1	California	Warning letter/citation sent to company.
7. May 17, 2004	Key Financial Corporation	97	Alabama, California, Florida, Ohio, and Virginia	Warning letter/citation sent to company.
8. March 31, 2004	American Standard Mortgage	13	Colorado, Illinois, and Ohio	Warning letter/citation sent to company.
9. Feb. 12, 2004	Mortgage Concepts, Inc.	480	Arizona, California, Georgia, Nevada, Ohio, Oregon, South Carolina, and Washington	Warning letter/citation sent to company.
10. Jan. 30, 2004	L.A.P. Holdings, LLC a.k.a. First Finance	84	Arizona, California, Florida, Maryland and Michigan	Warning letter/citation sent to company.
11. Jan. 12, 2004	Nations Mortgage	163	Florida and Ohio	Warning letter/citation sent to company.
12. Dec. 22, 2003	Debt Masters	1	Nebraska	Warning letter/citation sent to company.
13. Dec. 22, 2003	Ban-Cor Mortgage	109	California	Warning letter/citation to company.
14. Dec. 22, 2003	Cactus Cash, Inc.	14	Arizona	Warning letter/citation to company.

15. Dec. 22, 2003	Dynasty Mortgage	259	Arizona and California	Warning letter/citation sent to company.
16. Dec. 18, 2003	CPM Funding, Inc.	8	California, Florida, and New Mexico	Warning letter/citation sent to company.
17. Nov. 3, 2003	AT&T Corporation	29 complainants reporting 78 separate alleged company-specific do-not-call violations, as well as 438 complaints alleging national registry violations.	Alabama, California, Connecticut, Florida, Georgia, Michigan, Minnesota, New Jersey, Ohio, Oregon, Rhode Island, South Carolina, and Washington.	Initially proposed forfeiture \$780,000 (\$10,000 per violation) for company-specific violations (Forfeiture not final). Subsequent consent decree settlement - \$490,000 voluntary payment and implementation of compliance plan for separate national registry and company-specific do-not-call investigations (July 9, 2004).

IV. ORDERING CLAUSES

17. Accordingly, this report is issued pursuant to the Do-Not-Call Implementation Act, Pub. L. No. 108-10, 117 Stat. 557, and section 227 of the Communications Act of 1934, as amended, 47 U.S.C. § 227, and pursuant to authority delegated under sections 0.141 and 0.361 of the Commission's rules, 47 C.F.R. §§ 0.141 and 0.361.

18. IT IS ORDERED that the Secretary SHALL SEND copies of this report to the appropriate committee and subcommittees of the United States House of Representatives and the United States Senate.

FEDERAL COMMUNICATIONS COMMISSION

Monica S. Desai
Chief
Consumer & Governmental Affairs Bureau