

**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: July 11, 2008

Released: July 11, 2008

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 years 2006 and 2007, 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

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, 2005 through September 30, 2007.

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). A report for fiscal year 2004 was sent to Congress on September 16, 2005. *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, 20 FCC Rcd 14306 (2005). The report to Congress for fiscal year 2005 was delivered on January 26, 2007. *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, 22 FCC Rcd 999 (2007) (*FY 2005 FCC Report*).

3. On July 3, 2003, the FCC released a Report and Order (*Report and Order*) revising the Commission's rules on telemarketing in compliance with the requirements of the Do-Not-Call Act.⁵ Specifically, the *Report and Order* established 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 the Do-Not-Call Registry.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 Registry database.¹⁰

5. 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, 2007 (FY 2007). This report is submitted in accordance with Section 4(b) of the Do-Not-Call Act.¹¹ 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;
- (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 *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.

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. Telemarketers are required to access the registry and scrub their call lists every 31 days. 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 Do-Not-Call Act, 15 U.S.C. § 6101 at Sec. 4(b).

- (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.¹²

III. THE NATIONAL DO-NOT-CALL REGISTRY

A. Effectiveness of the Do-Not-Call Registry

6. 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. When the Registry was first established, telephone numbers were to remain in the Registry for five years.¹⁴ A consumer could re-register a number at the end of the five-year registration period.¹⁵ On February 19, 2008, Congress enacted the Do-Not-Call Improvement Act of 2007, making registrations permanent and prohibiting the automatic removal of registered telephone numbers.¹⁶ In addition, the FTC must periodically check numbers in the Registry and remove numbers that have been disconnected and reassigned.¹⁷

¹² See also Do-Not-Registry Fee Extension Act of 2007, Pub. L. No. 110-188, 122 Stat. 635, *codified at* 15 U.S.C. § 1601 (Fee Extension Act), which amends the Do-Not-Call Implementation Act. Among other things, the Fee Extension Act provides that no later than December 31, 2009, and biennially thereafter, the FTC, in consultation with this Commission, shall transmit a report to Congress that includes—1) the number of consumers who have placed their telephone numbers 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 Do-Not-Call Registry of the 5-year reregistration requirement, new telecommunications technology, and number portability and abandoned telephone numbers; and 4) the impact of the established business relationship exception on businesses and consumers. Fee Extension Act, 15 U.S.C. § 1601 at Sec. 3.

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, and 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 See Do-Not-Call Improvement Act of 2007, Pub. L. No. 110-187, 122 Stat. 633 (208), *codified at* 15 U.S.C. § 6101. See also *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02-278, Report and Order, FCC 08-147 (rel. June 17, 2008) (requiring telemarketers to honor registrations with the National Do-Not-Call Registry indefinitely, so that registrations will not automatically expire based on a five year registration period).

¹⁷ See Do-Not-Call Improvement Act of 2007, 15 U.S.C. § 1601 at Sec. 2.

7. As explained in the Report to Congress for FY 2005, 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. Since inception, the Registry has proven capable of handling a large volume of consumer telephone numbers. As stated below, by September 30, 2007, the Registry included over 145 million telephone numbers, with close to 25 million numbers added in FY 2006 and 13 million numbers added in FY 2007.¹⁸ The FCC's website provides guidance to consumers on how to register and how to file complaints regarding violations of the do-not-call rules.¹⁹ Telemarketers also are provided with instructions on how to access the registered telephone numbers and information describing their compliance obligations.

B. Number of Consumers Who Have Placed Their Telephone Numbers on the Do-Not-Call Registry

8. By the end of FY 2006, there were 132,219,163 telephone numbers registered on the Do-Not-Call Registry.²⁰ By the end of FY 2007, the number of telephone numbers registered on the Registry had climbed to 145,498,656.

C. Number of Persons Paying Fees for Access to the Do-Not-Call Registry and the Amount of Such Fees

9. According to the FTC, in FY 2006, a total of 6,824 entities paid fees for access to the Registry totaling \$21,698,970.²¹ In FY 2007, the FTC reported that 6,242 entities paid fees to access the Registry totaling \$21,602,003.

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

10. The Commission continues to coordinate its do-not-call activities with state agencies. In FY 2006 and FY 2007, Commission staff participated in monthly calls with state officials to exchange information on consumer protection issues, including telemarketing and do-not-call. In the enforcement context, the Commission's staff has frequently consulted with the states regarding do-not-call investigations at both the state and federal levels and has exchanged information relevant to specific investigations. The Commission expects such coordination to be an ongoing effort to promote the effectiveness of the national do-not-call program.

E. Coordination with the FTC on the Operation and Enforcement of the Do-Not-Call Registry

11. As explained in the annual report for FY 2005, the FCC and the FTC closely coordinate their efforts to enforce the Do-Not-Call Registry.²² Based on a jointly developed Memorandum of Understanding (MOU), the FCC and FTC have taken steps to ensure an efficient and effective

¹⁸ See *Annual Report to Congress for FY 2006 Pursuant to the Do Not Call Implementation Act on Implementation of the National Do Not Call Registry*, Federal Trade Commission, April 2007 at 1 (*2006 FTC Report*) and *FY 2005 FCC Report*, 22 FCC Rcd 999 (2007).

¹⁹ See <http://www.fcc.gov/cgb/donotcall/>.

²⁰ See *2006 FTC Report* at 4. This report only covers activity through the end of FY 2007. There are now over 157 million telephone numbers registered on the national do-not-call list.

²¹ See *2006 FTC Report* at 5.

²² See *FY 2005 FCC Report*, 22 FCC Rcd 999 at 1003, para. 13.

enforcement strategy that promotes compliance with federal telemarketing regulations.²³ During FY 2006 and FY 2007, the FCC and FTC continued to meet quarterly to discuss issues of mutual interest related to do-not-call enforcement, to exchange information on specific investigations, and to review planned enforcement actions to avoid unnecessary duplication of efforts. The agencies also made available to each other consumer complaints regarding possible violations of federal telemarketing rules. This close cooperation has resulted in meaningful and effective enforcement of the Do-Not-Call Registry.

F. FCC Enforcement Proceedings Under the TCPA

12. On May 1, 2007, the FCC implemented the new FCC Form 1088 which enables consumers to file complaints about telemarketing issues, including possible violations of the National Do-Not-Call Registry. To complain about a telemarketing call to a residential telephone, for example, consumers may fill out and submit the relevant section of Form 1088. The Commission accepts Form 1088 over the Internet, by telephone, by mail, and by fax. Form 1088 facilitates the filing of complaints by consumers and promotes a more efficient exchange of complaint data within the Commission.²⁴

13. Section 503(b)(5) of the Communications Act requires the Commission, as a first step in the enforcement process against an alleged violator that does not hold a Commission license, permit, certificate, or authorization, to send a warning citation to the party, advising it of the violation and providing an opportunity for an interview with the Commission's staff.²⁵ Only if the party subsequently engages in the type of conduct described in the citation can the Commission impose a forfeiture penalty against that party. During FY 2006 and FY 2007, the Commission issued 297 citations against parties who had allegedly violated the Commission's rules regarding the National Do-Not-Call Registry.²⁶

14. As noted above, if a citation recipient continues the unlawful behavior after receiving the citation, the Commission may propose monetary forfeiture penalties, but only for those violations that occur after issuance of the citation.²⁷ During FY 2006 and 2007, the Commission undertook or completed multiple investigations to determine whether it was appropriate to initiate forfeiture actions against various citation recipients. As a result, on May 14, 2007, the Commission assessed a monetary penalty of \$748,000 against Dynasty Mortgage, L.L.C. for willfully and repeatedly violating section 64.1200(c)(2) of the Commission's rules by making telephone calls for the purpose of delivering telephone solicitations to residential telephone consumers who had registered their telephone numbers on the National Do-Not-Call Registry.²⁸ In addition, during this time period, the Commission settled one investigation of possible violations of section 64.1200(c)(2) of the Commission's rules. On November 23, 2005, T-Mobile USA, Inc. agreed to pay \$100,000 to settle an ongoing investigation of potential do-not-call violations.²⁹ The parties reached this settlement without the Commission finding the company liable for violating the rules regarding the National Do-Not-Call Registry.

²³ See FCC-FTC Memorandum of Understanding: Telemarketing Enforcement (Dec. 2003).

²⁴ The Commission accepts complaints submitted electronically and by postal mail, e-mail, phone, and fax. See <http://www.fcc.gov/cgb/complaints.html>.

²⁵ 47 U.S.C. § 503(b)(5).

²⁶ 47 C.F.R. § 64.1200(c)(2).

²⁷ See 47 U.S.C. § 503(b)(5)(C).

²⁸ See *Dynasty Mortgage, L.L.C.*, Order of Forfeiture, 22 FCC Rcd 9453 (2007).

²⁹ See *T-Mobile USA, Inc.*, Order, 20 FCC Rcd 18272 (2005).

IV. ORDERING CLAUSES

15. 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.

16. 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

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