

**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: January 26, 2007

Released: January 26, 2007

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 2005, 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

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, 2004 through September 30, 2005.

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) (*FY 2003 FCC Report*). 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) (*FY 2004 FCC Report*).

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, 2005 (FY 2005). 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.

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.¹² 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.¹³ A consumer may re-register a number at the end of the five-year registration period.¹⁴

7. As explained in the Report to Congress for FY 2004, 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 stated below, by the end of FY 2005, the registry included over 107 million telephone numbers, with 43 million numbers added in FY 2005.¹⁵ 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.¹⁶ Telemarketers also are provided with instructions on how to access the registered telephone numbers and information describing their compliance obligations.

8. In addition, in 2005, Harris Interactive and Customer Care Alliance conducted follow-up surveys to their 2004 surveys which evidenced the continued popularity and success of the do-not-call registry.¹⁷ In September 2005, the Customer Care Alliance conducted a survey on the registry and found

¹² 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.

¹³ *See* 47 C.F.R. § 64.1200(c)(2); *Report and Order*, 18 FCC Rcd at 14036-37, para. 31.

¹⁴ *See Report and Order*, 18 FCC Rcd at 14036-37, para. 31.

¹⁵ *See Annual Report to Congress for FY 2005 Pursuant to the Do Not Call Implementation Act on Implementation of the National Do Not Call Registry*, Federal Trade Commission, July 2006 at 1 (*2005 FTC Report*). For FY 2004, the FCC reported that about 62 million numbers had been registered with the do-not-call registry. *See FY 2004 FCC Report*, 20 FCC Rcd at 14308 (2005).

¹⁶ *See* <http://www.fcc.gov/cgb/donotcall/>.

¹⁷ *See 2005 FTC Report* at 4.

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.¹⁸ In a 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.¹⁹ Harris Interactive also found that 92 percent of those who signed up for the registry had fewer telemarketing calls.²⁰

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

9. By the end of FY 2005, the National Do-Not-Call Registry included a total of 107,440,316 telephone numbers.²¹ From October 1, 2004 through September 30, 2005, approximately 43,000,000 telephone numbers were added to the national do-not-call registry.²²

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

10. According to the FTC, in FY 2005, a total of 6,794 entities paid fees totaling \$18,099,304 for access to the National Registry.²³ Since the Registry went into effect, 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 \$37,513,084.²⁴

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

11. The Commission routinely coordinates with state agencies in its do-not-call activities. The national database was designed to allow the states to download into the national registry — at no cost

¹⁸ See 2005 FTC Report at 5.

¹⁹ *Id.*

²⁰ *Id.*

²¹ See 2005 FTC Report at 5. According to the FTC, 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 FY 2005 is counted only once in these totals. A telephone number that was registered in FY 2003, FY 2004, or FY 2005 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 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 number of records transferred by the States appearing in the previous edition of the FTC's report erroneously included duplicate state records. The correct figures for FY 2003 and FY 2004 are 9,110,889 and 2,181,954, respectively. See 2005 FTC Report at 5-6.

²² This report only covers activity through the end of FY 2005. There are now over 138 million telephone numbers registered on the national do-not-call list.

²³ See 2005 FTC Report at 6.

²⁴ See 2005 FTC Report at 6. In 2004, the FTC raised the annual fee per area code to \$40 (with the first five area codes provided at no cost) and the maximum annual fee for accessing the entire National Registry was raised to \$11,000. See *Telemarketing Sales Rule Fees*, Federal Trade Commission, 69 Fed. Reg. 45580 (July 30, 2004). These fees were in effect for the annual period beginning on September 1, 2004, and ending on August 31, 2005. In 2005, the FTC raised the annual fee per area code to \$56, and the maximum annual fee for accessing the entire National Registry was raised to \$15,400. See *Telemarketing Sales Rule Fees*, Federal Trade Commission, 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.

— the telephone numbers of consumers that have registered with their state do-not-call lists.²⁵ As of the end of fiscal year 2005, 18 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.²⁶

12. In addition, the Commission participates 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 is committed to continuing these cooperative efforts with the states, and looks forward to further coordination that will enhance state and federal protection of consumer privacy.

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

13. The FCC and the FTC have maintained a close working relationship to enforce the do-not-call registry. 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 some overlap in federal regulations governing telemarketing activities.²⁷ Therefore, the FCC and FTC jointly developed a Memorandum of Understanding (MOU) to ensure an efficient and effective enforcement strategy that promotes compliance with federal telemarketing regulations.²⁸ During FY 2005, the FCC and FTC held quarterly meetings to discuss issues of mutual interest related to do-not-call enforcement, including the need to exchange information for specific investigations, and to review planned enforcement actions to avoid unnecessary duplication of efforts. As described in the *Report and Order*, the enforcement staff focused particularly on "those activities and entities that fall outside the FTC's reach—airlines, banks, credit unions, savings and loans, insurance companies, and common carriers, as well as intrastate transmissions by any entity."²⁹ The agencies also made available to each other consumer complaints regarding possible violations of federal telemarketing rules. This close coordination between the two agencies has resulted in effective enforcement of the do-not-call registry.

F. FCC Enforcement Proceedings Under the TCPA

14. The table below summarizes the FCC's enforcement actions for FY 2005.

Date of Action	Company Name	States where affected consumers located	Type of enforcement action taken

²⁵ See *Report and Order*, 18 FCC Rcd at 14060-61, para. 77.

²⁶ The 18 states, as identified by the FTC, are Alabama, Arkansas, California, Colorado, Connecticut, Florida, Georgia, Idaho, Kansas, Kentucky, Maine, Massachusetts, Minnesota, Mississippi, New York, North Dakota, Oklahoma and Pennsylvania. According to the FTC, seven states have not shared their registries with the national registry—Indiana, Louisiana, Missouri, Tennessee, Texas, Wisconsin and Wyoming. See *2005 FTC Report* at 8.

²⁷ *Report and Order*, 18 FCC Rcd at 14138, para. 211.

²⁸ See FCC-FTC Memorandum of Understanding: Telemarketing Enforcement (Dec. 2003).

²⁹ See *Report and Order*, 18 FCC Rcd at 14139.

1. May 3, 2005	Direct Merchant's Credit Card Bank, N.A.	Arkansas, California, Illinois, Ohio	Citation sent to company. ³⁰
2. March 11, 2005	American Express Company	Arizona, California, Colorado, Connecticut, Georgia, Illinois, Maine, Massachusetts, Michigan, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, South Carolina, Virginia	Citation sent to company.
3. March 1, 2005	Dynasty Mortgage, L.L.C.	Arizona, California	Proposed forfeiture of \$770,000 (\$11,000 per violation for each of 70 violations). A draft forfeiture order is currently pending before the Commission.
4. January 19, 2005	American First Mortgage Company	California	Citation sent to company.
5. Oct. 27, 2004	Equity One	California, Florida, Oregon, Pennsylvania	Citation sent to company.

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

Catherine W. Seidel
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Consumer & Governmental Affairs Bureau

³⁰ Section 503(b)(5) of the Communications Act, 47 U.S.C. § 503(b)(5), requires the Commission, as a first step in the enforcement process against any party who is not a holder of or applicant for a Commission authorization, to send a warning citation to the party, advising it of the violation at issue and providing an opportunity for an interview with the Commission staff. Only if the party subsequently engages in the type of unlawful conduct described in the citation can the Commission impose a forfeiture penalty against that party.