

**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)
)

REPORT AND ORDER

Adopted: June 11, 2008

Released: June 17, 2008

By the Commission: Chairman Martin, Commissioners Copps, Adelstein, Tate, and McDowell issuing separate statements.

I. INTRODUCTION

1. In this Report and Order (Order), we amend the Commission's rules under the Telephone Consumer Protection Act (TCPA)¹ to require sellers and/or telemarketers to honor registrations with the National Do-Not-Call Registry so that registrations will not automatically expire based on the current five year registration period. Consistent with the Do-Not-Call Improvement Act of 2007,² we extend this requirement indefinitely to minimize the inconvenience to consumers of having to re-register their preferences not to receive telemarketing calls and to further the underlying goal of the National Registry to protect consumer privacy rights.

II. BACKGROUND

A. The Telephone Consumer Protection Act

2. On December 20, 1991, Congress enacted the TCPA, as codified in section 227 of the Communications Act of 1934, as amended, in an effort to address a growing number of telephone marketing calls and certain telemarketing practices Congress found to be an invasion of consumer privacy.³ In relevant part, the TCPA required the Commission to "initiate a rulemaking proceeding concerning the need to protect residential telephone subscribers' privacy rights"⁴ and specifically authorized the Commission to consider "the establishment and operation of a single national database to

¹ Telephone Consumer Protection Act of 1991, Pub. L. No. 102-243, 105 Stat. 2394 (1991), *codified at* 47 U.S.C. § 227 (TCPA). The TCPA amended Title II of the Communications Act of 1934, 47 U.S.C. § 201 *et seq.* See also 47 C.F.R. § 64.1200 *et seq.*

² Do-Not-Call Improvement Act of 2007, Pub. L. No. 110-187, 122 Stat. 633 (2008), *codified at* 15 U.S.C. § 6101 (DNC Act).

³ See TCPA, Section 2(5), reprinted in 7 FCC Rcd 2736 at 2744.

⁴ 47 U.S.C. § 227(c)(1).

compile a list of telephone numbers of residential subscribers who object to receiving telephone solicitations.”⁵

3. On July 3, 2003, the Commission revised the TCPA rules and adopted new rules to provide consumers with several options for avoiding unwanted telephone solicitations.⁶ In particular, the Commission established a National Do-Not-Call Registry, in conjunction with the Federal Trade Commission (FTC), to provide residential consumers with a one-step option to prevent unwanted telemarketing calls.⁷ The National Do-Not-Call Registry, which went into effect October 1, 2003, prohibits sellers and/or telemarketers from contacting those consumers who register their telephone numbers on the do-not-call list, unless the call falls within a recognized exemption.⁸ Pursuant to Commission regulations, sellers and/or telemarketers are required to honor such do-not-call registrations for a period of five years.⁹ The National Do-Not-Call Registry supplemented the long-standing company-specific do-not-call rules which require companies to maintain lists of consumers who ask not to be called by a particular company.¹⁰

4. The Commission also concluded that a “safe harbor” should be established for sellers and/or telemarketers that have made a good faith effort to comply with the national do-not call rules.¹¹ Consistent with the FTC’s rules, the safe harbor provides that a seller or an entity telemarketing on behalf of the seller will not be liable for violating the national do-not-call rules if it can demonstrate that, among other things, it uses a process to prevent telemarketing calls to any telephone number on the Registry and

⁵ 47 U.S.C. § 227(c)(3). See *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CC Docket No. 92-90, Report and Order, 7 FCC Rcd 8752 (1992) (*1992 TCPA Order*); see also 47 C.F.R. § 64.1200.

⁶ *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02-278, Report and Order, 18 FCC Rcd 14014 (2003) (*2003 TCPA Order*). The Commission’s action in the *2003 TCPA Order* responded in part to the Do-Not-Call Implementation Act signed into law on March 11, 2003, which required the Commission to issue a final rule in its ongoing TCPA proceeding within 180 days of enactment, and to consult and coordinate with the Federal Trade Commission (FTC) to “maximize consistency” with the rules promulgated by the FTC. See Do-Not-Call Implementation Act, Pub. L. No. 108-10, 117 Stat. 557 (2003), *codified at* 15 U.S.C. § 6101.

⁷ *2003 TCPA Order*, 18 FCC Rcd at 14034, para. 28.

⁸ 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 do-not-call rules. These include surveys, market research, and political and religious speech calls. The 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 (EBR), calls to businesses, and calls to persons with whom the marketer has a “personal relationship.” *2003 TCPA Order*, 18 FCC Rcd at 14039-40, para. 37.

⁹ 47 C.F.R. § 64.1200(c)(2) (“No person or entity shall initiate any telephone solicitation, as defined in paragraph (f)(12) of this section, to: . . . (2) A residential telephone subscriber who has registered his or her telephone number on the national do-not-call registry of persons who do not wish to receive telephone solicitations that is maintained by the federal government. Such do-not-call registrations must be honored for a period of 5 years”). The Commission concluded that a five-year registration period coupled with a monthly purging of disconnected telephone numbers adequately balances the need to maintain accuracy in the national registry with any burden imposed on consumers to re-register periodically their telephone numbers. See *2003 TCPA Order*, 18 FCC Rcd at 14036-37, para. 31.

¹⁰ 47 C.F.R. § 64.1200(d).

¹¹ *2003 TCPA Order*, 18 FCC Rcd at 14040, para. 38.

employs a version of the Do-Not-Call Registry obtained from the administrator no more than 31 days prior to the date any call is made.¹² The seller must also maintain records documenting this process.¹³

5. The opening of the National Do-Not-Call Registry was announced on June 27, 2003. That same day, consumers were permitted to begin registering their telephone numbers on the Registry online or by calling a toll-free number. Within the first three days of the Registry's operation, consumers had registered more than 10 million telephone numbers.¹⁴ As of June 2004, one year after opening registration to the public, the National Registry contained more than 62 million telephone numbers. Today, the National Do-Not-Call Registry contains over 157 million numbers.¹⁵

B. Notice of Proposed Rulemaking

6. On December 4, 2007, the Commission released a Notice of Proposed Rulemaking (*DNC NPRM*) that tentatively concluded that the Commission should amend its rules so that sellers and/or telemarketers would be required to honor registrations with the National Do-Not-Call Registry until the registration is cancelled by the consumer or the telephone number is removed by the database administrator because it was disconnected or reassigned.¹⁶ The Commission noted its concern that, starting June 28, 2008, five years after the opening of the Registry, as many as 10 million registered numbers might expire and be automatically removed from the database unless consumers take steps to re-register the numbers.¹⁷ The Commission sought comment on this tentative conclusion, as well as how to implement such a rule change and coordinate with the FTC.¹⁸ In response to the *DNC NPRM*, the Commission received 41 comments and 6 reply comments.¹⁹ The majority of commenters support the proposed rule change,²⁰ arguing that removing the current five-year registration period is in the public

¹² See *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02-278, 19 FCC Rcd 19215 (2004); 47 C.F.R. § 64.1200(c)(2)(i)(D).

¹³ *Id.*

¹⁴ 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).

¹⁵ On February 18, 2005, the Commission released a *Second Order on Reconsideration* addressing a number of petitions that raised questions related to the administration and operation of the National Do-Not-Call Registry. *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02-278, Second Order on Reconsideration, 20 FCC Rcd 3788 at 3790-92, paras. 6-9 (2005) (*Second Order on Reconsideration*) (noting DMA petition arguing that keeping wireless numbers on the national list will burden high-volume callers who have already taken measures to eliminate wireless numbers from their marketing lists and contending that the list should not contain business numbers and Brown petition asking the Commission to determine that telemarketers must update their call lists on a daily basis using the National Do-Not-call Registry). It indicated, however, that the Commission would continue to monitor closely the operation of the list to ensure its continued effectiveness.

¹⁶ *Rules and Regulations Implementing the Telephone and Consumer Protection Act of 1991*, CG Docket No. 02-278, Notice of Proposed Rulemaking, 22 FCC Rcd 21237 (2007) (*DNC NPRM*).

¹⁷ *Id.* at para. 4.

¹⁸ *Id.* at paras. 11-12.

¹⁹ See list of comments filed in Appendix C.

²⁰ See American Teleservices Association Comments, at 1, filed January 14, 2008 (ATA Comments); Bank of America Comments, filed January 16, 2008; Direct Marketing Association Comments, filed January 14, 2008 (DMA Comments); Matanuska Telephone Association Comments, filed January 14, 2008 (MTA Comments); National Association of State Utility Consumer Advocates Comments, filed January 14, 2008 (NASUCA Comments); Nebraska Public Service Commission Comments, filed January 14, 2008 (Nebraska PSC Comments);

(continued....)

interest and will enhance consumer privacy interests.²¹ In addition, although not raised in the *DNC NPRM*, several commenters urged the Commission to amend the company-specific do-not-call rules which require companies to honor do-not-call requests for five years.

C. The Do-Not-Call Improvement Act

7. On February 15, 2008, Congress passed into law the Do-Not-Call Improvement Act of 2007 (DNC Act).²² The DNC Act amends the Do-Not-Call Implementation Act and prohibits the automatic removal of telephone numbers registered on the National Do-Not-Call Registry since the establishment of the Registry and those numbers registered after the date of enactment of the law.²³ Further, the DNC Act requires the FTC to periodically check telephone numbers registered on the Registry against national or other appropriate databases and to remove those telephone numbers that have been disconnected and reassigned.²⁴ Finally, the DNC Act requires the FTC, no later than 9 months after enactment of the law, to report to Congress on efforts taken by the FTC to improve the accuracy of the Do-Not-Call Registry.²⁵

D. The Do-Not-Call Registry Fee Extension Act

8. Congress also enacted the Do-Not-Call Registry Fee Extension Act of 2007 on February 15, 2008.²⁶ The Fee Extension Act provides for the collection of fees by the FTC to implement and enforce the Do-Not-Call Registry.²⁷ The law also 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 five-year reregistration requirement, new telecommunications technology,

(...continued from previous page)

Newspaper Association of America, filed January 14, 2008 (NAA Comments); AT&T Reply Comments, filed January 28, 2008; Verizon Reply Comments, filed January 28, 2008.

²¹ MTA Comments at 3; NASUCA Comments at 5; Nebraska PSC Comments at 2.

²² See *supra*, note 2.

²³ DNC Act, Sec. 5(a). See also Press Release, Federal Trade Commission, Do Not Call Registrations Permanent and Fees Telemarketers Pay to Access Registry Set (Apr. 10, 2008) at <http://www.ftc.gov/opa/2008/04/dncfyi.shtml> (last visited May 6, 2008) (April 10 FTC Press Release). We note that the FTC had previously committed that it would “not drop any telephone numbers from the Registry based on the five-year registration period pending final Congressional or agency action on whether to make registration permanent.” See *Enhancing FTC Consumer Protection in Financial Dealings, with Telemarketers, and the Internet: Hearing Before the Committee on Energy and Commerce, Subcomm. On Commerce, Trade and Consumer Prot.*, 110th Cong. 10 (2007) (statement of Lydia Parnes, Dir. Bureau of Consumer Protection, FTC) (*Parnes Statement*).

²⁴ DNC Act, Sec. 5(b). The DNC Act also provides that “[n]othing in this section prohibits the Federal Trade Commission from removing invalid telephone numbers from the registry at any time.” *Id.*

²⁵ *Id.* at Sec. 3.

²⁶ Do-Not-Call Registry Fee Extension Act of 2007, Pub. L. No. 110-188, 122 Stat. 635, *codified at* 15 U.S.C. § 1601 (Fee Extension Act).

²⁷ The FTC is required to charge telemarketers \$14,850 a year for access to Registry data in every area code of the nation, or \$54 per area code for every numbering area code above the five that companies can access for free. See Fee Extension Act, Sec. 2.

and number portability and abandoned telephone numbers; and 4) the impact of the established business relationship exception on businesses and consumers.²⁸

III. DISCUSSION

9. Consistent with the DNC Act, we amend our rules to require sellers and/or telemarketers to honor registrations with the National Do-Not-Call Registry until the registration is cancelled by the consumer or the telephone number is removed by the database administrator. Further, we recognize the importance of ensuring the continued accuracy of the Registry. To assist the database administrator with removing disconnected and reassigned numbers from the Registry, we encourage Local Exchange Carriers (LECs) to timely and accurately convey such information to the FTC. We intend to coordinate closely with the FTC on this issue and to consult with them on ways to further enhance the Registry's accuracy. Finally, for the reasons discussed below, we decline to consider changes to our company-specific do-not-call rules at this time.²⁹

A. Registrations

10. We agree with those commenters that argue that eliminating the need for consumers to re-register their numbers will enhance consumer privacy protections and benefit the federal government in administering the National Registry. Making registrations permanent will alleviate any burdens on consumers associated with re-registering numbers, including the time and effort necessary to register and the need to remember when to re-register.³⁰ As noted by the Nebraska Public Service Commission (Nebraska PSC), in addition to benefiting consumers, eliminating the automatic removal of registrations after five years will save valuable government resources that would have been necessary to re-register millions of expired numbers.³¹ The FTC has committed to not drop any telephone numbers from the Registry based on the five-year registration period.³² In addition, Congress has prohibited the removal of registered numbers, unless the consumer cancels the registration or the number has been disconnected and

²⁸ Fee Extension Act, Sec. 4(a). In addition, the law requires the FTC to transmit another report to Congress, in consultation with this Commission, on: 1) the effectiveness of do-not-call outreach and enforcement efforts with regard to senior citizens and immigrant communities; 2) the impact on the exceptions to the do-not-call registry on businesses and consumers, including an analysis of the effectiveness of the registry and consumer perceptions of the registry's effectiveness; and 3) the impact of abandoned calls made by predictive dialing devices on do-not-call enforcement. Fee Extension Act, Sec. 4(b).

²⁹ We also note that several commenters urge the Commission to take action on Petitions for Declaratory Ruling, which raise questions concerning the proper relationship between state and federal telemarketing laws. These petitions are currently pending before the Commission in another proceeding; therefore, we decline to address them in this Order. *See, e.g.*, American Teleservices Association, Inc. Petition for Declaratory Ruling with Respect to Certain Provisions of the New Jersey Consumer Fraud Act and the New Jersey Administrative Code, CG Docket No. 02-278, filed August 24, 2004; Consumer Bankers Association Petition for Declaratory Ruling with Respect to Certain Provisions of the Indiana Revised Statutes and Indiana Administrative Code, CG Docket No. 02-278, filed November 19, 2004; Consumer Bankers Association Petition for Declaratory Ruling with Respect to Certain Provisions of the Wisconsin Statutes and Wisconsin Administrative Code, CG Docket No. 02-278, filed November 19, 2004; Alliance Contact Services, *et al.* Petition for Declaratory Ruling that the FCC has Exclusive Regulatory Jurisdiction Over Interstate Telemarketing, filed April 29, 2005.

³⁰ *See* Nebraska PSC Comments at 2; NASUCA Comments at 5.

³¹ Nebraska PSC Comments at 2.

³² *See* April 10 FTC Press Release; *see also* Press Release, Federal Trade Commission, 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) at <http://www.ftc.gov/opa/2007/10/dnctestimony.shtm> (last visited Mar. 24, 2008).

reassigned. Amending our rules to require sellers and/or telemarketers to continue to honor registrations for as long as they remain in the Registry, is therefore consistent with the FTC's policy and Congress's mandate, as well as with the record developed in this proceeding. Accordingly, we modify Section 64.1200(c)(2) of the Commission's rules to require sellers and/or telemarketers to honor numbers registered on the Registry indefinitely or until the number is removed by the database administrator or the registration is cancelled by the consumer.

11. Furthermore, we disagree with the National Association of Realtors (NAR) that requiring sellers and/or telemarketers to honor registrations indefinitely will result in increased burdens for small businesses. As NASUCA and the Nebraska PSC note, sellers and/or telemarketers—including those that are small businesses—will be required to access the Registry and avoid calling numbers in the Registry just as they do today.³³ Small businesses can continue to access the Registry on an area-code-by-area-code basis and need only purchase those area codes in which the seller intends to telemarket.³⁴ In addition, the national database provides a single number feature whereby a small number of telephone numbers can be entered on a web page to determine whether any of those numbers are included on the Registry. Therefore, we do not believe the amended rules will be burdensome for sellers and/or telemarketers, including small businesses.³⁵

B. Accuracy of the National Do-Not-Call Registry

12. We recognize the importance of maintaining an accurate Do-Not-Call Registry. The DNC Act provides that the FTC shall periodically check the numbers in the Registry and purge those numbers that have been disconnected and reassigned.³⁶ Currently, the database administrator checks all telephone numbers in the Registry once a month against national databases to remove any disconnected and reassigned numbers.³⁷ Several commenters that support eliminating the five-year registration period urge the Commission to take additional steps to ensure that the Registry is accurate.³⁸ ATA and NAA argue that numbers should be removed from the Registry when they are *either* disconnected *or* reassigned.³⁹ ATA believes that eliminating a number from the Registry when it is first disconnected, rather than waiting for that number to be reassigned, will enhance the Registry's accuracy.⁴⁰

³³ NASUCA Reply Comments at 2-3; Nebraska PSC Comments at 2.

³⁴ NASUCA Comments at 2. The Nebraska PSC agrees and states that if small businesses find the costs prohibitive, the government could consider a tiered cost structure to access the Registry. Nebraska PSC Comments at 2.

³⁵ See ATA Comments at 5 (arguing that monthly purging will increase the size of the Registry and have adverse effects on small businesses).

³⁶ DNC Act, Sec. 5(b).

³⁷ According to the FTC, the subcontractor in charge of the Registry contracts with a list broker that obtains information on every number in the North American Numbering Plan. This information includes LECs' daily updates of subscriber data and the date on which numbers are disconnected and reconnected. Once a month, the FTC's subcontractor compares the Registry against the database maintained by the list broker to remove telephone numbers that have been disconnected and reassigned. See *Parnes Statement* at n.9. See also ATA Comments at 3-4.

³⁸ Bank of America Comments at 1; DMA Comments at 1-2; NAA Comments at 2-3; AT&T Reply Comments at 1-2; DMA Reply Comments at 1; Verizon Reply Comments at 1.

³⁹ ATA Comments at 3-4 (arguing that purging the Registry once per month prevents new residents to an area from receiving offers related to their new homes). See also NAA Comments at 2 (stating that accuracy problems have been a result of the FTC's practice of not removing disconnected numbers until they are reassigned).

⁴⁰ ATA Comments at 3-4.

13. We anticipate that the FTC will continue to remove any disconnected and reassigned numbers from the Registry, as required by the DNC Act. In addition, we intend to work closely with the FTC to consider options to enhance the Registry's accuracy, including whether scrubbing the database more frequently is possible and might improve the overall accuracy of the database.⁴¹ As suggested by some commenters, we encourage LECs to report information on disconnected and reassigned numbers to the FTC subcontractor as timely as possible so that such numbers might be purged more than once per month.⁴² The NAA argues that more rapid reporting of this data by telephone companies to the FTC subcontractor will allow the FTC to improve the accuracy of the Registry.⁴³ We also encourage these parties to submit such proposals directly to the FTC.⁴⁴

14. Finally, we decline to require that business and wireless numbers be removed from the Registry, as the DMA proposes.⁴⁵ As the Commission has previously stated, the National Do-Not-Call Registry applies to "residential subscribers" and does not preclude calls to businesses.⁴⁶ To the extent that some business numbers have been inadvertently registered on the national registry, calls made to such numbers will not be considered violations of our rules. In addition, the Commission has concluded that wireless subscribers are entitled to the same protections from unwanted telemarketing calls as wireline subscribers and may participate in the National Do-Not-Call Registry.⁴⁷

C. Company-Specific Do-Not-Call Rules

15. In response to the *DNC NPRM*, the Commission received several comments relating to section 64.1200(d) of the Commission's rules, which requires a company to honor a consumer's company-specific do-not-call request for a period of five years.⁴⁸ The Commission's company-specific do-not-call rules were not raised in the *DNC NPRM* and therefore are beyond the scope of the current proceeding. Should the Commission find that this issue warrants further review in the future, we will initiate a rulemaking proceeding at that time.

D. Conclusion

16. Accordingly, we amend our rules to require sellers and/or telemarketers to honor registrations on the National Do-Not-Call Registry indefinitely.⁴⁹ This action is consistent with Congress's mandate in

⁴¹ Several commenters posited other suggestions about how the Commission and the FTC could collaborate. *See, e.g.,* Bank of America Comments at 2 (urging the Commission and FTC to work together to obtain a quarterly sampling of reassigned or disconnected numbers along with the numbers remaining on the Registry to evaluate the accuracy of the databases). Bank of America also suggests publishing on the Registry's website an annual report on database activities and errors. *Id.*

⁴² DMA Comments at 1.

⁴³ NAA Comments at 3; ATA Comments at 6 (arguing that LECs should provide such information on a daily basis).

⁴⁴ In that regard, we note that, because the FTC maintains the accuracy of the Do-Not-Call Registry, ATA and NAA may wish to raise their proposals regarding the removal of numbers from the Registry when they are first disconnected or reassigned with the FTC. As noted above, the DNC Act requires the FTC to report to Congress on efforts taken to improve the accuracy of the Registry. *See supra*, para. 7.

⁴⁵ DMA Comments at 2.

⁴⁶ *Second Order on Reconsideration*, 20 FCC Rcd at 3793, para. 14.

⁴⁷ *2003 TCPA Order*, 18 FCC Rcd at 14039, para. 36. *See also* NASUCA Comments at 3-4 (arguing that eliminating wireless numbers from the Registry would be difficult due to number portability).

⁴⁸ 47 C.F.R. § 64.1200(d)(3), (6).

⁴⁹ *See* Final Rules, Appendix A.

the DNC Act, which prohibits the removal of numbers from the Registry unless the numbers have been disconnected and reassigned or are otherwise invalid.⁵⁰ Further, we encourage LECs to timely and accurately convey information on disconnected and reassigned numbers to the FTC, and we will continue to coordinate with the FTC on additional ways to improve the Registry's accuracy.

IV. PROCEDURAL MATTERS

A. Paperwork Reduction Act

17. This *Report and Order* contains modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. It will be submitted to the Office of Management and Budget (OMB) for review under Section 3507(d) of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the modified information collection requirements contained in this proceeding.

18. In addition, we note that pursuant to the Small Business Paperwork Review Act of 2002, Public Law No. 107-198, *see* 44 U.S.C. § 3506(c)(4), we previously sought specific comment on how the Commission might "further reduce the information collection burden for small business concerns with fewer than 25 employees. In this present document, we have assessed the effect of these rule changes and find that there likely will be an increased administrative burden on businesses with fewer than 25 employees. However, the amended rules do not require the maintenance of any additional records or require entities to alter their current practices to comply with the National Do-Not-Call Registry. These measures should substantially alleviate any burdens on businesses with fewer than 25 employees.

B. Congressional Review Act

19. The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. § 801(a)(1)(A).

C. Materials in Accessible Formats

20. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at (202) 418-0530 (voice) or (202) 418-0432 (TTY). This *Report and Order* can also be downloaded in Word and Portable Document Format (PDF) at <http://www.fcc.gov/cgb/policy>.

D. Final Regulatory Flexibility Act Analysis

21. Pursuant to the Regulatory Flexibility Act of 1980, as amended,⁵¹ the Commission's Final Regulatory Flexibility Analysis regarding the *Report and Order* is attached as Appendix B.

V. ORDERING CLAUSES

22. Accordingly, IT IS ORDERED that, pursuant to Sections 1-4, 227 and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154, 227 and 303(r); and Section 64.1200 of the Commission's rules, 47 C.F.R. § 64.1200, this *Report and Order* in CG Docket No. 02-278 IS

⁵⁰ DNC Act, Sec. 5.

⁵¹ *See* 5 U.S.C. § 604.

ADOPTED, and Part 64 of the Commission's rules, 47 C.F.R. § 64.1200, IS AMENDED as set forth in Appendix A.

23. IT IS FURTHER ORDERED that the rules as revised in Appendix A SHALL BE EFFECTIVE after approval by OMB. The Commission will publish a document in the Federal Register announcing the effective date of the amended rules.

24. IT IS FURTHER ORDERED that the Commission's Consumer & Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this *Report and Order*, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX A**Final Rules**

Title 47, Part 64 of the Code of Federal Regulations is amended as follows:

PART 64 – MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

1. The authority citation for Part 64 as of October 1, 2007, continues to read as follows:

47 U.S.C. 154, 254(k); secs. 403(b)(2)(B), (c), Pub. L. 104-104, 110 Stat. 56. Interpret or apply 47 U.S.C. 201, 218, 222, 225, 226, 228, and 254 (k) unless otherwise noted.

* * * * *

2. Section 64.1200(c)(2) is revised to read as follows:

* * *

(c) No person or entity shall initiate any telephone solicitation, as defined in paragraph (f)(12) of this section, to:

* * *

(2) A residential telephone subscriber who has registered his or her telephone number on the national do-not-call registry of persons who do not wish to receive telephone solicitations that is maintained by the federal government. Such do-not-call registrations must be honored indefinitely, or until the registration is cancelled by the consumer or the telephone number is removed by the database administrator. Any person or entity making telephone solicitations (or on whose behalf telephone solicitations are made) will not be liable for violating this requirement if:

* * *

* * * * *

APPENDIX B

Final Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),¹ an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the Notice of Proposed Rulemaking (*DNC NPRM*), released by the Federal Communications Commission (Commission) on December 4, 2007.² The Commission sought written public comment on the proposals contained in the Notice, including comment on the IRFA. Comments filed in this proceeding that address the impact of the proposed rules and policies on small entities are discussed below.

A. Need for, and Objectives of, the Adopted Rules

2. In 2003, the Commission released a Report and Order (*2003 TCPA Order*)³ revising the TCPA rules to respond to changes in the marketplace for telemarketing. Specifically, the Commission established, in conjunction with the Federal Trade Commission (FTC), a National Do-Not-Call Registry for consumers who wish to avoid unwanted telemarketing calls. The National Do-Not-Call Registry supplements long-standing company-specific rules which require companies to maintain lists of consumers who have directed the company not to contact them by phone. The *2003 TCPA Order* required telemarketers to honor do-not-call registrations on the National Registry for five years. It also revised the company-specific do-not-call rules to reduce the retention period for such do-not-call requests from ten to five years.

3. On December 4, 2007, the Commission released the *DNC NPRM* seeking comment on our tentative conclusion that registrations with the Registry should be honored indefinitely, unless a number is disconnected or reassigned or the consumer cancels his registration. Subsequently, on February 15, 2007, Congress enacted the Do-Not-Call Improvement Act of 2007 (DNC Act), which prohibits the automatic removal of registered numbers, unless a number has been disconnected, reassigned, or is otherwise invalid. This *Report and Order* amends the Commission's rules so that registrations with the National Do-Not-Call Registry will not expire after a period of five years, consistent with the DNC Act and FTC policy. This action will benefit consumers, who will no longer be required to re-register every five years, thereby reducing any burdens on consumers in terms of the time and effort required to register and the need to remember when to re-register.

B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

4. No comments were filed in response to the IRFA directly. However, in response to the *DNC NPRM*, some commenters raised concerns about the impact of the Commission's proposed rule changes on small businesses. The National Association of Realtors (NAR) argued that requiring telemarketers to honor registrations indefinitely will result in increased economic burdens for small businesses.⁴ The American Teleservices Association contended that the rule change will lead to a larger Registry, and

¹ See 5 U.S.C. § 603. The RFA, see 5 U.S.C. §§ 601 – 612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

² *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Notice of Proposed Rulemaking, 22 FCC Rcd 21237 (2007).

³ *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02-278, Report and Order, 18 FCC Rcd 14014 (2003) (*2003 TCPA Order*).

⁴ NAR Comments at 1.

consequently larger Registry file sizes, which will adversely impact small businesses due to their limited resources.⁵ Others argued that the rule change would have a negligible effect on small businesses.⁶ NASUCA and the Nebraska Public Services Commission pointed out, for example, that small businesses will be required to access the Registry and avoid calling numbers in the Registry just as they do today.⁷

C. Description and Estimate of the Number of Small Entities to Which the Adopted Rules Apply

5. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.⁸ The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."⁹ In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.¹⁰ A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.¹¹

6. The modifications to the regulations adopted in this item apply to a wide range of entities, including all entities that use the telephone to advertise. That is, the rule changes affect the myriad of businesses throughout the nation that telemarket and, therefore, must access the National Registry to avoid calling registered numbers, including the following:

7. *Interexchange Carriers.* Neither the Commission nor the SBA has developed a specific size standard for small entities specifically applicable to providers of interexchange services. The closest applicable size standard under the SBA rules is for Wired Telecommunications Carriers. Under that standard, such a business is small if it has 1,500 or fewer employees.¹² According to the FCC's *Telephone Trends Report* data, 281 carriers reported that their primary telecommunications service activity was the provision of interexchange services.¹³ Of these 281 carriers, an estimated 254 have 1,500 or fewer employees, and 27 have more than 1,500 employees.¹⁴ Consequently, we estimate that a majority of interexchange carriers may be affected by the rules.

⁵ ATA Comments at 4, 5.

⁶ See NASUCA Reply Comments at 2-3.

⁷ NASUCA Comments at 2-3; Nebraska PSC Comments at 2.

⁸ 5 U.S.C. § 603(b)(3).

⁹ 5 U.S.C. § 601(6).

¹⁰ 5 U.S.C. § 601(3) (incorporating by reference the definition of "small business concern" in 15 U.S.C. § 632). Pursuant to the RFA, the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register." 5 U.S.C. § 601(3).

¹¹ Small Business Act, 15 U.S.C. § 632 (1996).

¹² 13 C.F.R. § 121.201, NAICS code 517110.

¹³ FCC, Wireline Competition Bureau, Industry Analysis and Technology Division, *Trends in Telephone Service*, at Table 5.3, p. 5 - 5 (May 2004) (*Telephone Trends Report*). This source uses data that are current as of October 22, 2003.

¹⁴ *Id.*

8. *Incumbent Local Exchange Carriers.* Neither the Commission nor the SBA has developed a small business size standard for providers of incumbent local exchange services. The closest applicable size standard under the SBA rules is for Wired Telecommunications Carriers. Under that standard, such a business is small if it has 1,500 or fewer employees.¹⁵ According to the FCC's *Telephone Trends Report* data, 1,310 incumbent local exchange carriers reported that they were engaged in the provision of local exchange services.¹⁶ Of these 1,310 carriers, an estimated 1,025 have 1,500 or fewer employees and 285 have more than 1,500 employees.¹⁷ Consequently, the Commission estimates that the majority of providers of local exchange service are small entities that may be affected by the rules and policies adopted herein.

9. *Wireless Service Providers.* In November of 2007, The SBA developed a small business size standard for small businesses in the category "Wireless Telecommunications Carriers (except satellite)."¹⁸ Under that SBA category, a business is small if it has 1,500 or fewer employees.¹⁹ Thus, under this category and the associated small business size standard, the great majority of firms can be considered small. For a census category that existed for a prior version of the NAICS codes, namely "Cellular and Other Wireless Telecommunications," Census Bureau data for 2002 show that there were 1,397 firms in this category that operated for the entire year.²⁰ Of this total, 1,378 firms had employment of 999 or fewer employees, and 19 firms had employment of 1,000 employees or more.²¹ Thus, under this category and size standard, the majority of firms can be considered small.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

10. The *Report and Order* amends the Commission's rules to require sellers and/or telemarketers to honor registrations on the National Do-Not-Call Registry until the registration is either cancelled by the consumer or the number is removed by the database administrator. This rule change will affect compliance requirements, as numbers currently registered will not be automatically removed from the Registry five years after they were registered. However, we expect that sellers and/or telemarketers will continue to access the Registry and avoid calling numbers on the Registry as they do today. There are no new or additional reporting or recordkeeping requirements associated with the amended rules.

E. Steps Taken to Minimize Significant Impact on Small Entities and Significant Alternatives Considered

11. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or

¹⁵ 13 C.F.R. § 121.201, NAICS code 517110.

¹⁶ *Telephone Trends Report*, Table 5.3.

¹⁷ *Id.*

¹⁸ 13 C.F.R. § 121.201, NAICS code 517210.

¹⁹ *Id.*

²⁰ U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, "Establishment and Firm Size Including Legal Form of Organization," Table 5, superseded NAICS code 517212.

²¹ *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with "1000 employees or more."

reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.²²

12. In this *Report and Order*, we amend our rules to require sellers and/or telemarketers to honor national do-not-call registrations indefinitely. The alternative would be to not modify the rules and leave the period for honoring registrations at 5 years for sellers and/or telemarketers subject to our rules. This would result in the Commission's rules being inconsistent with FTC policy and Congress's mandate in the DNC Improvement Act to not remove numbers after 5 years.

13. The Commission considered the burdens to small businesses of having to comply with these amended rules.²³ The record revealed that some commenters suspected that the Commission's proposed rule change would negatively impact small businesses. They argued that small businesses would have to purchase additional storage space and experience lengthier download times to accommodate the increased size of the Registry. Commenters also feared that numbers that had been disconnected or reassigned would not be purged from the Registry in a timely manner. We considered these concerns and concluded that the rule change will not be overly burdensome for small entities. Such entities will be required to continue to access the Registry as they do today. Small businesses can obtain the data on an area-code-by-area-code basis and need only purchase those area codes in which they intend to telemarket. In addition, the Commission found that the rule change's benefits to the public and to consumer privacy interests outweighed the potential negative effect on small businesses of eliminating the five-year registration period. Consumers will no longer be required to re-register every five years or need to remember when and how to re-register. In response to concerns about the accuracy of the Registry, we note that Congress requires the FTC to check the database and remove disconnected and reassigned numbers. In addition, the Commission encourages LECs to provide information to the database administrator timely and accurately to enhance the FTC's ability to remove disconnected and reassigned numbers, thereby improving the overall accuracy of the Registry. We also encourage parties to submit additional proposals directly to the FTC for consideration.

F. Report to Congress

14. The Commission will send a copy of the *Report and Order*, including this FRFA, in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. § 801(a)(1)(A). In addition, the Commission will send a copy of the *Report and Order*, including the FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the *Report and Order* and FRFA (or summaries thereof) will also be published in the Federal Register. *See* 5 U.S.C. § 604(b).

²² *See* 5 U.S.C. § 603(c).

²³ *See* Report and Order, para. 11, *supra*.

APPENDIX C**Comments Filed****Organizations**

American Teleservices Association
Bank of America
Direct Marketing Association
Matanuska Telephone Association
National Association of Realtors
National Association of State Utility Consumer Advocates
Nebraska Public Service Commission
Newspaper Association of America

Individuals

Rachael
Sabina Barash
Jason Becker
Effie Bright
Charles D. Brown
Mary Burch
Melody Ruth Falls
Dorothy Goettelman
David Harrison
James Hawkins
Mark Hengartner
Arthur Jakubczak
Suzee Zarna-Jaques
Michael Jaye
Constance Jensen
Arron T. Johnson
Michael P. King
Steven Kleinman
Cassandra Krowl
Donald Lucas
Grant Merrit
Don Opacic
Terri L. Perry
Lynette Pierce
Cassidy Ann Pruett
Greg Ray
Gina Repp
Sherry R. Richardson
Maria S.
Chris Scarbrough
EA Scrivener
Linda Weakly
Thomas Wyskowski

Reply Comments Filed

American Teleservices Association

AT&T Inc.

Direct Marketing Association

National Association of State Utility Consumer Advocates

Silverleaf Resorts

Verizon

**STATEMENT OF
CHAIRMAN KEVIN J. MARTIN**

Re: *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02-278.

Today's action concludes that telephone numbers registered in the National Do-Not-Call Registry will not expire after 5 years. Consumers expect their telephone numbers to remain protected under the Registry until they have cancelled their registration or their telephone number is disconnected and reassigned. The Order we adopt ensures that consumers registered with the National Do-Not-Call Registry maintain the privacy they expect and deserve.

At the direction of Congress, the National Do-Not-Call Registry was adopted to make it easier and more efficient for consumers to prevent unwanted telemarketing calls. Since the opening of the Registry was announced in June of 2003, over 157 million telephone numbers have been placed on the Registry. These registrations would have begun to expire later this month leaving millions of consumers without protection from unwanted telemarketing calls.

Earlier this year, Congress prohibited the automatic removal of telephone numbers from the National Do-Not-Call Registry. Consistent with this direction, we require telemarketers to honor registrations with the Registry until consumers have cancelled their registration or their telephone number is disconnected and reassigned. This will minimize confusion for those consumers that have chosen to avoid unwanted telemarketing calls and avoid the inconvenience of having to re-register every five years.

**STATEMENT OF
COMMISSIONER MICHAEL J. COPPS**

Re: *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02-278

In December 2007, I supported a Notice of Proposed Rulemaking that tentatively concluded that the Commission should amend our rules to require telemarketers to indefinitely honor consumers' registrations with the Do Not Call Registry. The Commission's current rules established a five year registration period that was due to expire next month for tens of millions of consumers who signed up for, and have enjoyed the benefits of, the Do Not Call Registry since its inception in 2003. I am pleased to support the Commission's decision to amend our rules to make registrations indefinite as such a change comports with legislation enacted earlier this year, minimizes the inconvenience to consumers of having to re-register, and continues to protect consumers' privacy.

**STATEMENT OF
COMMISSIONER JONATHAN S. ADELSTEIN**

Re: *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02-278.

The National Do-Not-Call Registry benefits millions of consumers on a daily basis, allowing them to once again view their phones as useful connections to the world rather than sources of unending harassment. For so many Americans, once they were signed up for the Registry, it was hard to imagine going back. Despite this success, the imminent fifth anniversary of the Do-Not Call Registry loomed not as a cause for celebration but as a ticking time bomb for consumers. That is because the registrations of roughly 10 million consumers were set to expire at the end of this month, with an estimated 50 million more set to expire over the next year. Responding to this threat, in February of this year, Congress passed the Do-Not-Call Improvement Act, which prohibited the automatic removal of telephone numbers from the Registry. So, I am pleased that we do our part today by implementing Congress's mandate in a timely fashion. As I have oft said, we must do everything within our power to maintain the vitality of the Registry as a tool to protect the privacy of American families, and I am glad that we do so here.

**STATEMENT OF
COMMISSIONER DEBORAH TAYLOR TATE**

Re: *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02-278.

As I stated last November, I have been a strong supporter of the Do-Not-Call program as a state commissioner and certainly as a consumer. I am extremely proud of the Tennessee Do-Not-Call Program established in 1999, which has been extremely vigilant in responding to consumer complaints resulting in over \$300,000 in enforcement actions against violators. I am very proud of the work done by the TRA and many other state commissions that oversee state programs for American consumers.

Likewise, the federal government established a national Do-Not-Call program in 2003. As in Tennessee, the Do-Not-Call program has been extremely popular, with approximately 150 million consumers registering their telephone numbers, and has been very successful in curbing the number of unwanted telemarketing calls. That is why the action we are taking today will ensure that this important protection remains an effective means for consumers to be free of unwanted telephone solicitations without action by the consumer or disruption in this important program.

**STATEMENT OF
COMMISSIONER ROBERT M. MCDOWELL**

Re: *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02-278

We initiated a rulemaking proceeding last December to require telemarketers to honor on a permanent basis residential telephone numbers that were submitted to the National Do-Not-Call registry. This registry has become an effective vehicle to prevent consumers from receiving unwanted telephone solicitations from telemarketers. In the meantime, Congress passed the Do-Not-Call Improvement Act of 2007 that prohibits the automatic removal of telephone numbers on the registry. Also, the Federal Trade Commission, our sister agency that maintains and administers the registry, has taken steps to retain numbers on a permanent basis.

By taking this action to amend our rules, we are preserving telephone consumers' peace of mind in avoiding unwanted interruptions by telemarketers at all hours of the day and night. We are also avoiding imposing a burden on consumers to re-register their numbers on the Do-Not-Call registry. I am pleased to support this decision that protects telephone consumers' privacy.