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Telemarketing: Dealing with Unwanted Telemarketing Calls

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Summary

In recent years, Congress has enacted several federal laws addressing telemarketing fraud and practices. As a result, both the Federal Communications Commission (FCC) and the Federal Trade Commission (FTC) have established regulations covering the \$720 billion telemarketing industry in the United States. It is estimated that consumers lose over \$40 billion a year to fraudulent telemarketers. Although the vast majority of telemarketers are legitimate business people attempting to sell a particular product or service, there are unscrupulous individuals and companies violating telemarketing rules and promoting various fraudulent schemes aimed at parting consumers from their money.

The FCC, FTC, and several consumer groups and government/business partnerships identified in this report provide extensive information on telemarketing. This report provides summaries of the federal laws and regulations particular to telemarketing, the establishment of a national do-not-call registry, and on the options that are available to consumers to attempt to limit the calls that they receive from telemarketers and to report questionable telemarketing practices to local or federal authorities. The report also lists sources of additional information with addresses, phone numbers, and Internet sites (if available) and will be updated as legislation or news events warrant.

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Telemarketing: Dealing with Unwanted Telemarketing Calls

Telephone marketing, better known as telemarketing, is an approximately \$720 billion business in the United States, according to the Direct Marketing Association (DMA). As telephone technologies become more advanced, it becomes more cost-effective for telemarketers to use these technologies to sell various products and services directly to consumers. Only a few households have not received a telemarketing call. However, with the expansion of the telemarketing business comes the expansion of telemarketing fraud. Although the vast majority of telemarketers are legitimate business people, there are other individuals and companies who violate existing laws and rules and bilk unsuspecting customers of \$40 billion a year according to some estimates.

Table 1. Telemarketing in the United States
(dollars in billions)

	1996	2000	2001	2002	2006
Consumer	\$181.1	\$252.7	\$274.2	\$295.3	\$402.8
Business-to-Business	\$223.0	\$351.0	\$387.6	\$424.3	\$587.8
Total	\$404.1	\$603.7	\$661.8	\$719.5	\$990.6

Source: Direct Marketing Association. *Economic Impact: U.S. Direct and Interactive Marketing Today, 2002*, Executive Summary. [<http://www.the-dma.org/library>]

Federal Laws

In recent years, several federal laws that deal directly with telemarketing issues have been enacted. Each of the laws has a different focus relative to telemarketing, but all attempt to limit or prohibit certain abusive, fraudulent, or deceptive practices. Because both the Federal Communications Commission (FCC) and the Federal Trade Commission (FTC) are responsible for different aspects of telemarketing, both agencies were directed to promulgate regulations. The FCC generally covers consumers' privacy rights relative to telemarketing practices and the use of the telephone system by telemarketers to transmit information whether via facsimile machine, automated dialing mechanisms, recorded calls, or by a live person. The FTC is concerned more with the content and consequences of the call, and its regulations focus on whether certain sales practices are misleading, fraudulent, or deceptive. Individual states have passed laws relating to telemarketing practices within a state.

Telephone Consumer Protection Act of 1991 (TCPA)

The TCPA, P.L. 102-243, was signed by President Bush on December 20, 1991. It was the first of the six federal laws passed dealing specifically with telemarketing issues. This Act directed the Federal Communications Commission to issue rules balancing the fair business practices of telemarketers with the privacy concerns of consumers.

Some of the provisions of the FCC rules resulting from this Act are as follows:

- Telemarketing companies must maintain a do-not-call list for calls placed to residential telephone numbers. If a consumer requests that his/her name be placed on such a list, the company must honor the request for 10 years. Nonprofit and charitable organizations are exempted from this provision, and the rules do not apply to calls placed to business telephone numbers.

If a consumer's name is on a company's do-not-call list and the company places more than one call to that consumer in the year after the consumer has been placed on the list, the consumer may, if he/she wishes, sue the telemarketer in state court, usually a small claims court. Should a consumer pursue court action, he/she should maintain records of all calls and contacts with the company.

- Telephone solicitations to private residences may only be made between the hours of 8 a.m. and 9 p.m.
- Use of autodialers or prerecorded (artificial) voice messages to call any emergency telephone line (911, hospital, medical office, health care facility, poison control center, police, or fire lines), a guest or patient room in a hospital, health care facility, or home for the elderly, any phone number assigned to a paging service or cellular telephone, or services for which the person called would be charged for the call are prohibited unless prior consent was given to receive such calls.
- Prerecorded (artificial) voice calls to private homes are prohibited. However, such calls are permitted if the person called has consented to receive such calls, the call is noncommercial (from a charitable, nonprofit, political, or polling organization or government agency), the entity calling has an established business relationship with person called, or the call is an emergency. Such calls to business numbers are permitted.
- Any person or entity making a telephone solicitation to a private home must provide the name of the individual caller, the name of the person or entity on whose behalf the call is being made, and a telephone number or address where that person or entity may be contacted.

- Any person or business using autodialers or prerecorded (artificial) voice calls, including calls placed to businesses, must state its identity at the beginning of the message and its telephone number or address during or after the message.
- Autodialer calls may not lock onto a phone line. Within 5 seconds of a phone being hung up, the autodialer must release the phone line. In some areas of the country, due to different telephone system technologies, this release may take longer. Customers should check with their local telephone company for additional information.
- Calls transmitting unsolicited advertisements to home or business fax machines are prohibited unless permission has been granted to do so or there is an established business relationship. Any message sent to a fax machine must include the date and time the transmission is sent, identity of the sender, and the telephone number of the sender or the sending fax machine.

The FCC's initial final rule can be found in the *Federal Register* of October 23, 1992, on pages 48333-36. After some modification, the rule was finalized in August 1995 and published in the *Federal Register* of August 15, 1995, on pages 42068-42069. The Consumer and Governmental Affairs Bureau of the FCC provides information concerning the Telephone Consumer Protection Act of 1991 and telemarketing issues at [<http://www.fcc.gov/cgb/consumerfacts/tpa.html>] (unwanted telemarketing calls), [<http://www.fcc.gov/cgb/consumerfacts/unwantedfaxes.html>] (unwanted faxes), or [<http://www.fcc.gov/cgb/consumerfacts/telemarketscam.html>] (telemarketing scams).

2002 FCC TCPA Review. On September 12, 2002, the FCC announced that it would review its existing telemarketing rules due to changes in telemarketing practices and the introduction of advanced technologies, enabling new marketing techniques. The FCC noted that these new practices and technologies have increased concerns about consumer privacy.¹

The Commission sought public comment on issues such as the need to revise its rules to more effectively follow the directions of Congress provided in the TCPA concerning balancing privacy rights, public safety interests, and commercial freedom of speech; revising or adding to its rules concerning autodialers, prerecorded messages, and fax advertisements; the effectiveness of company do-not-call lists; and the creation of a national do-not-call list. The Federal Trade Commission also considered establishment of a national do-not-call list. However, since the FTC is prohibited by statute from regulating certain industries (banks, credit unions, savings and loans, common carriers, and insurance companies, for example), an FCC national do-not-call list applies to industries not covered by an FTC list. The FCC considered creation of a national do-not-call database during promulgation of TCPA rules in

¹ *In the Matter of Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*. FCC 02-250, Federal Communications Commission. Adopted: Sept. 12, 2002. Released: Sept. 18, 2002. Available via the FCC Web site at [<http://www.fcc.gov>].

1992. It decided not to create such a database at the time because of issues such as cost, maintaining the accuracy of such a system, security of telemarketer proprietary information, and privacy of telephone subscribers with unlisted or unpublished numbers. Instead, the FCC required companies to maintain their own do-not-call lists.

A summary of the FCC's proposed rule review appeared in the *Federal Register* on October 8, 2002, on pages 62667-62681. Comments relating to the review were due by November 22, 2002. Following the Federal Trade Commission's December 18, 2002 announcement of its amendments to the Telemarketing Sales Rule, the FCC extended the reply comment period to January 31, 2003. The extension was to ensure that all interested parties could take the FTC actions into account before submitting their comments.

2003 FCC Update of TCPA Rules and Creation of a National Do-Not-Call Registry. On June 26, 2003, the FCC announced that it would establish a national do-not-call registry covering both interstate and intrastate calls. The FCC noted that its update of the TCPA rules does not require states to discontinue their individual do-not-call registries, but any state do-not-call registry must include the name of any of its residents that are in the national database. States may adopt more restrictive laws relating to intrastate telemarketing, but may not establish practices less restrictive than the federal regulations. As with the FTC rules, consumers may continue to request that their names be added to individual company do-not-call lists if they so choose. On the other hand, consumers may also provide written permission to specific companies from which they wish to receive telemarketing calls even if they are on the national registry. The registry becomes effective on October 1, 2003, and consumers may begin registering complaints, if necessary, at that time.

Telemarketers may continue to call consumers with whom they have an "established business relationship." The FCC definition of established business relationship would permit a company to contact a customer for 18 months following a business transaction and for three months following an inquiry or application. However, the company may not call the customer again if the customer requests to be put on the company's do-not-call list.

The updated TCPA rules also included additional restrictions on predictive dialers in an attempt to reduce "dead air" and quick hang-up calls by requiring that no more than 3% of all calls placed and answered by a person may be abandoned. In addition, when a call is abandoned within the 3% range, the telemarketing company must provide a prerecorded message identifying the company. Also prohibited is the blocking of caller ID information.

Fax Rules. Under the new rules, before transmitting an unsolicited fax "advertisement," the sender must obtain written permission from the intended recipient before sending the fax. However, following the release of the new fax rule, many businesses and nonprofits felt that the language of the rule was vague and would require them to get written permission from every one of their customers and members before sending any kind of fax to them even if the customer or member expected and was used to getting faxes from the company or nonprofit. According to various companies and nonprofits, the cost of obtaining permission from

thousands of customers or members would be quite high and an administrative burden. As a result, petitions were filed with the FCC to delay the implementation of the rule (scheduled to go into effect on August 25, 2003) and reconsider the language. On August 19, the FCC announced that it would postpone implementation of the fax rule until January 1, 2005. Only implementation of the fax rule is postponed. All other new telemarketing rules will take effect as planned.

Exemptions. Tax-exempt nonprofit organizations and calls concerning political and religious speech are exempt from the FCC's TCPA rules. In addition, consumers may still receive calls that are not commercial in nature or do not include unsolicited advertisements. Although banking, insurance, telecommunications, and airline companies were exempt from the FTC's rules, they are not exempt from these updated FCC Telephone Consumer Protection Act rules.

Since the Federal Trade Commission had previously announced the establishment of a national do-not-call registry, the FCC will implement its rules in conjunction with the FTC. The FTC will administer the national database with both agencies coordinating enforcement activities. There will not be two separate national registries.

The FCC provides information on the updated TCPA rules at its Web site at [<http://www.fcc.gov/cgb/donotcall>]. A synopsis of the new FCC rules appeared in the *Federal Register* on July 25, 2003, pp. 44144-44179.

Court Challenge. On July 28, 2003, the American Teleservices Association (ATA) filed suit in the U.S. Court of Appeals for the Tenth Circuit in Denver (*American Teleservices Association v. Federal Communications Commission*) seeking a judicial review of the FCC rules establishing a national do-not-call registry. ATA claims that implementation of the rule could cost the industry and the economy up to 2 million jobs and violates the First Amendment rights of telemarketers. The court, on September 26, 2003, denied the motion to stay the FCC's order.

For further information on the court cases and state and national do-not-call registries, see CRS Report RL31642, *Regulation of the Telemarketing Industry: State and National Do-Not-Call Registries*, by Angie A. Welborn.

Telemarketing and Consumer Fraud and Abuse Prevention Act

P.L. 103-297 was signed by President Clinton on August 16, 1994. The Act directed the Federal Trade Commission to establish rules to prohibit certain telemarketing activities. The FTC's final Telemarketing Sales Rule (TSR) was adopted on August 15, 1995. The rule covers most types of telemarketing calls and also applies to calls consumers make in response to material received in the mail, but it is not intended to affect any state or local telemarketing laws. The rule went into effect on December 31, 1995.

Some of the provisions of the rule are the following:

- The rule restricts calls to the hours between 8:00 a.m. and 9:00 p.m.
- It forbids telemarketers from calling consumers if they have been asked not to. Violations of this provision may be reported to the state Attorney General.
- It requires certain prompt disclosures, prohibits certain misrepresentations and lying to get consumers to pay, and makes it illegal for a telemarketer to withdraw money directly from a checking account without the account holder's specific, verifiable authorization.

Telemarketers calling consumers must promptly identify the seller of the product or service, that the purpose of the call is to sell something, the nature of the goods or services being offered and, in the case of a prize promotion, that no purchase or payment is required to participate or win. In addition, prior to a consumer paying for any good or service, the consumer must be provided with material information that is likely to affect their choice of the good or service. Material information includes cost and quantity; restrictions, limitations, or conditions; refund policy; and, in the case of a prize promotion, information on the odds of winning, that there is no payment required to enter the promotion, how the consumer may enter the promotion without paying, and information on any material costs or conditions that may be required to receive or redeem any prize.

- Telemarketers and sellers are required to maintain certain records for two years from the date that the record is produced. Records includes items such as advertising and promotional materials, information about prize recipients, sales records, employee records, and all verifiable authorizations for demand drafts for payment from a consumer's bank account.

There are exceptions to the Telemarketing Sales Rule. For example, calls initiated by a consumer that are not made in response to a solicitation, business-to-business calls (in most cases), and sales of 900-number (pay-per-call) services and franchises (covered by other FTC rules) are not covered. Certain types of businesses—banks, federal credit unions, federal savings and loans, common carriers (long-distance telephone companies and airlines), non-profits, insurance companies, and many types of companies selling investments—are not covered by the rule because they are exempted from the FTC's jurisdiction and, in most cases, are regulated by other federal agencies. However, individuals or companies providing telemarketing services under contract for these companies are covered. The application of the rule can be complex. Consumers should check with state authorities or the FTC for clarification of coverage.

With certain limitations, the FTC, the states, and private individuals may bring civil actions in federal district courts to enforce the rule.

A statement of purpose and the text of the Telemarketing Sales Rule can be found in the August 23, 1995, *Federal Register*, pages 43842-438477. Additional FTC information concerning telemarketing is available at [<http://www.ftc.gov/bcp/menu-tmark.htm>]. Complaints may be filed electronically at this site.

FTC Telemarketing Sales Rule Review. During 2000, as required by this Act, the FTC began conducting a review of the rule's effectiveness, its overall costs and benefits, and its regulatory and economic impact since its adoption. In addition, the FTC examined telemarketing and its impact on consumers over the past two decades.² Results of the review will be reported to Congress. For further information, see [<http://www.ftc.gov/bcp/rulemaking/tsr/tsr-review.htm>].

On January 22, 2002, the FTC announced substantial proposed changes to the TSR. Among the FTC's proposed changes was the creation of a national do-not-call list. If enacted, consumers would place their name on the list by calling a toll-free telephone number. It would then be against the law for a telemarketer to call those consumers. Because certain businesses are exempt from the TSR (see above), notably those that consumers have given permission to contact them, placing a name on the list would not stop all telemarketing calls. Details concerning the procedures and operation of the national list were addressed during review of the FTC proposal.³

In addition, the FTC proposed that telemarketers be prohibited from blocking caller ID systems, that telemarketers be prohibited from obtaining a consumer's credit card or other account number from anyone but the consumer or from improperly sharing that number with anyone else for use in telemarketing, and that use of predictive dialers resulting in "dead air" (i.e., no one on the line) violates the TSR.

The full text of the FTC Notice of Proposed Rulemaking and additional information is available at this site: [<http://www.ftc.gov/opa/2002/01/donotcall.htm>]. In addition, the Notice was published in the *Federal Register* on January 30, 2002, on pages 4491-4546. The FTC accepted comments on the proposed TSR rule changes until March 29, 2002.

On May 24, 2002, the FTC announced that it had not yet made any final determination regarding the establishment of a national do-not-call registry. However, concerned with funding for operation of the registry should it be implemented, the FTC amended its January 22 proposal to include the assessment of user fees on all telemarketers that access or obtain data from any national do-not-call registry that might be established. The Commission also reiterated that it is not proposing any charges to consumers for adding their names to the registry. Currently, the FTC estimates that development and implementation of a national list would cost approximately \$5 million. Of that, approximately \$3 million would come

² *Federal Register*, February 28, 2000, pp. 10428-10434.

³ For additional information on do-not-call lists, see CRS Report RL31642, *Regulation of the Telemarketing Industry: State and National Do Not Call Registries*, by Angie A. Wellborn.

from user fees. According to the FTC, there are approximately 3,000 telemarketers that would be required to pay the user fee.

The Direct Marketing Association (DMA), a national trade association serving the direct marketing industry, believes this amendment to the original proposal would be counterproductive to the industry's efforts at self-regulation and would be a financial burden to telemarketers. The DMA currently operates the DMA Telephone Preference Service, an industry-run national do-not-call list with 4.5 million names on the list.

The full text of the Notice of Proposed Rulemaking concerning the proposed user fees may be found in the *Federal Register* of May 29, 2002, on pages 37362-37369. The FTC announcement of the notice with links to the text of the proposal may be found at [<http://www.ftc.gov/opa/2002/05/fyi0229.htm>]. Comments on this issue were accepted until June 28, 2002.

2002 FTC Creation of a National Do-Not-Call Registry and Other Rule Changes. The FTC announced, on December 18, 2002, the creation of a national do-not-call registry and changes to the Telemarketing Sales Rule. Extensive information on TSR changes is available at the FTC Web site at [<http://www.ftc.gov/bcp/online/edcams/donotcall/index.html>]. The FTC press release announcing the TSR changes may be found at [<http://www.ftc.gov/opa/2002/12/donotcall.htm>]. The changes only affect companies regulated by the FTC and only those telemarketing calls crossing state lines. Individual state laws and regulations cover telemarketing practices within a state. Notably, long-distance phone companies, banks, credit unions, airlines, and insurance companies are not covered by FTC telemarketing regulations. However, with the FCC's June 26, 2003 announcement of its revised TCPA rules and national do-not-call registry, these categories of companies are covered by FCC telemarketing regulations.

In addition, political solicitations are not covered by the revised TSR. The Final Amended Rule may be found on pages 4579-4679 of the January 29, 2003 *Federal Register* and also at the FTC Web site at this address: [<http://www.ftc.gov/os/2002/12/tsrfinalrule.pdf>]. Some provisions of the amended rule became effective on March 31, 2003. However, the caller ID provisions do not have to be met until January 29, 2004, and the national do-not-call registry will not be available until July 2003. Also, following petitions to the FTC, the effective date of some provisions was extended to October 1, 2003.⁴

Among the announced FTC changes was the National Do-Not-Call Registry. After reviewing more than 60,000 public comments, the FTC will establish a national do-not-call registry for consumers who want to stop most unwanted telemarketing calls. The registry was not implemented immediately because it required funding approval from Congress.

⁴ See *Federal Register*, March 26, 2003, pp. 14659-14660, and April 4, 2003, pp. 16414-16415.

Early in 2003, in two separate pieces of legislation, Congress provided the FTC with authorization to develop and implement the national do-not-call registry.

Do-Not-Call Implementation Act, 2003. P.L. 108-10 (H.R. 395), the Do-Not-Call Implementation Act, signed by President Bush on March 11, 2003, provided the FTC with the authorization for establishing the fees. In addition, this Act permits the fees to be collected for FY2003 through FY2007; directs the FCC to issue a final rule in its Telephone Consumer Protection Act proceeding no later than 180 days after the enactment of the Act; requires the FTC and FCC to issue reports to Congress on regulatory coordination between the two agencies within 45 days after the FCC issues its final rule; and requires annual reports to Congress from the FTC and FCC for FY2003 through FY2007. The annual reports must address the effectiveness of the national registry, the number of consumers participating, the number of persons paying fees to access the registry, the amount of the fees, an analysis of coordinating the operation of the national do-not-call registry with state do-not-call lists, FTC and FCC coordination, and a review of any FTC and FCC enforcement proceedings.

Consolidated Appropriations Resolution, 2003. In the Consolidated Appropriations Resolution, 2003 (H.J.Res 2, P.L. 108-7) signed by the President on February 20, 2003, Congress authorized the FTC to collect up to \$18,100,000 to develop the national do-not-call registry. Following passage of this Act, the FTC awarded a \$3,500,000 contract to AT&T Government Solutions (a division of AT&T) to build and operate the registry.

A separate registration must be completed for each phone number and, if using the toll-free number, a consumer must make the call from the number to be placed on the registry. A consumer with three telephone lines (cell phone numbers may be registered) would have to register each number separately. A number remains on the list for five years and the listing may be renewed. There will be no charge to consumers, but there will be a charge to telemarketers for access to the names on the list. Telemarketers will have to update their calling lists every three months to remove telephone numbers on the national registry from their lists. Telemarketers who ignore the registry could be fined up to \$11,000 for each violation. Adding a phone number to the registry will not stop all telemarketing calls.

There is an exemption in the amended TSR for telemarketers who have an established business relationship with a customer. The FTC states that there is an established business relationship "... if the customer has purchased, leased, or rented goods or services from the company within 18 months preceding the call, or if the consumer has submitted an application or made an inquiry to the company within the three months preceding the call."⁵ Even so, a consumer may still make a specific request to the company not to call. In addition, if a consumer wants to receive calls from a specific company, he/she may contact the company and give it permission to call even if the phone number is on the national registry. Companies will be required

⁵ See "FTC Announces Final Amendments to Telemarketing Sales Rule, Including National 'Do Not Call' Registry," FTC Press Release, Dec. 18, 2002. Available at [<http://www.ftc.gov/opa/2002/12/donotcall.htm>].

to continue their own do-not-call lists and must add names to that list if requested to do so by consumers.

- “Dead Air” Calls—According to the FTC, dead air calls (or call abandonment) violate the amended TSR. However, the FTC decided to give telemarketers a “safe harbor” on dead air calls if they meet specific requirements. “... businesses will not be liable for violating this provision of the rule if they: (1) ensure that no more than three percent of calls that are answered by a person are abandoned, measured per day per calling campaign; (2) allow each called consumer’s telephone to ring for at least 15 seconds or four rings before disconnecting; (3) connect each call to a sales representative within two seconds of the consumer’s greeting, or, if a sales representative is not available to speak with the consumer within two seconds of the call being answered, they play a recorded message stating the name and telephone number of the seller—the message cannot include a sales pitch; and (4) maintain records showing compliance with the requirements for abandonment rate, ring time and recorded message.”⁶ Takes effect October 1, 2003.
- Caller ID—Starting January 29, 2004, telemarketers must transmit their telephone number to a consumer’s caller ID service. In addition, if technically possible, the telemarketer must transmit their company’s name as well. Telemarketers have one year to come into compliance with the caller ID provisions.
- Billing Authorization—Telemarketers will be prohibited from receiving unencrypted consumer account numbers, except when used for processing a payment for goods or services or a charitable contribution according to the terms of a transaction approved by the consumer; unauthorized billing is prohibited without a consumer’s informed consent; all material terms of any free trial period offer that involves some automatic charge at the end of the trial period must be disclosed; and any payment methods involving demand drafts, phone checks, charges to mortgage or utility accounts, or any other novel or unfamiliar method must be specifically and verifiably authorized by the customer.
- Charitable Solicitations—Telemarketers soliciting charitable contributions are exempt from complying with provisions of the national registry, but must not call consumers who have specifically contacted them and asked not to be called. However, those soliciting charitable contributions must promptly reveal the name of the organization making the call and that the purpose of the call is to raise money.

⁶ “FTC Announces Final Amendments to Telemarketing Sales Rule ...”

National Do-Not-Call Registry Calendar

June 27, 2003

Consumers throughout the country started adding their numbers to the national registry via the Web at [<http://DONOTCALL.GOV>] on Friday, June 27. Consumers in states west of the Mississippi, including Louisiana and Minnesota, started registering by phone on the same day by calling toll-free 1-888-382-1222 (TTY 1-866-290-4236).

July 7, 2003

Phone registration opened for the entire country.

Consumers registering via the Web must provide an e-mail address. An e-mail will be sent by the registry to that address and, within 72 hours, a response must be sent to the registry to complete the registration process. Consumers registering by phone must call from the telephone number they want to register. A separate call must be made from each telephone line that is to be listed on the registry. Those registered remain on the list for five years or until they change their phone number. Registrations must then be renewed.

Individual companies and states will continue to maintain their own lists.

September 2003

The registry was made available to telemarketers.

October 1, 2003

The FTC, FCC, and the states were scheduled to begin enforcing the provisions of the amended TSR and TCPA. Telemarketers must check and update their lists at least once every 90 days.

Note: As a result of court cases described elsewhere in this report, the registry was closed in late September. Following a U.S. court of appeals ruling on October 7, 2003, the FTC reopened the registry in October. Telemarketers that already have the list are expected to immediately comply with the new telemarketing rules.

October 9, 2003

The registry re-opened for consumers.

October 10, 2003

Telemarketers may access the registry.

October 17, 2003

Telemarketers that did not already have the list must stop calling numbers on the list.

Fees for Industry Access to the National Registry. The FTC announced, on July 29, 2003, an amendment to the TSR to establish fees for industry access to the National Do-Not-Call Registry. There will be no charge for the first five area codes of data. Access to a single area code will cost \$25. The maximum annual fee will be \$7,375 to access the entire country. Companies exempted from the TSR (political fund-raisers, charitable solicitations, and those conducting surveys) will be provided access to the registry at no cost to encourage them to voluntarily scrub their lists.

Information on fees charged for access to the registry and a guide for telemarketers and sellers about the TSR may be found at the FTC Web site at [<http://www.ftc.gov/opa/2003/07/tsrfeesfrn.htm>]. A synopsis of the fee rule was published in the *Federal Register* on July 31, 2003, pp. 45134-45144.

More extensive information on the amendments to the Telemarketing Sales Rule, including the text of the amended rule, is available from the FTC Web site at [<http://www.ftc.gov/bcp/online/edcams/donotcall/index.html>].

Court Challenges. On January 29, 2003, the DMA filed suit in the U.S. District Court for Western Oklahoma (*U.S. Security v. Federal Trade Commission*), alleging that the FTC's actions violated the First Amendment right to advertise and that the FTC had overstepped its statutory authority with its proposal of the national do-not-call registry. The court, on September 23, 2003, found that the FTC had exceeded its statutory authority in creating a national do-not-call registry. The court upheld other provisions of the FTC's telemarketing sales rule. In response to the court's ruling, Congress passed a bill (H.R. 3161) on September 25 to clarify the FTC's authority. On September 29, President Bush signed the legislation, which became P.L. 108-82.

Also, on January 29, 2003, the American Teleservices Association and two telemarketing companies filed suit in the U.S. District Court for Colorado (*Mainstream Marketing Services, TMG Marketing, and American Teleservices Association v. Federal Trade Commission*). On September 25, 2003, the U.S. District Court for Colorado ruled that the national registry, as established by the FTC, was unconstitutional and violated the First Amendment. The FTC filed on September 26 a motion for an emergency stay pending appeal, with the district judge issuing the order. The motion was denied on September 29. On that date, the same district judge issued a second order that warned the FTC not to assist the FCC with implementation of the national do-not-call registry.

Also, on September 26, the FTC also filed a notice of appeal with the U.S. Court of Appeals for the Tenth Circuit in Denver. On October 7, the court of appeals issued a stay pending appeal of the district court's order. The court of appeals did not reverse the district court's order and did not deal with the constitutionality of the do-not-call registry. The case will continue in the court of appeals and is scheduled to be argued beginning on November 10, 2003. As a result of the stay, FTC officials may begin enforcing the new telemarketing rules.

For further information on the court cases and state and national do-not-call registries, see CRS Report RL31642, *Regulation of the Telemarketing Industry: State and National Do-Not-Call Registries*, by Angie A. Welborn.

In addition, it has been reported that the telemarketing industry may have to pay millions of dollars for obtaining the FTC and separate state registries, new hardware and software, and training for sales personnel. Some in the telemarketing industry have said that very small firms may be forced out of business.

Senior Citizens Against Marketing Scams Act of 1994

This Act was Title XXV of the Violent Crime Control and Law Enforcement Act of 1994, P.L. 103-322, and was signed by President Clinton on September 13, 1994. It included provisions that increased penalties for telemarketing fraud against people over 55 years old. Provisions of this law allow imprisonment up to an additional five years for certain telemarketing crimes or up to 10 additional years if 10 or more persons over the age of 55 were victimized or the targeted persons were over 55. Also, the Act requires that full restitution be paid to victims and directs the U.S. Attorney to enforce any restitution order.

Telecommunications Act of 1996

P.L. 104-104, signed by President Clinton on February 8, 1996, was a substantial amendment to the 62-year old Communications Act of 1934. Section 701 of the Act closed a loophole that allowed information service providers and telemarketers to connect callers to “pay-per-call” services even though the callers had initially dialed a toll-free telephone number.

Telemarketing Fraud Prevention Act of 1997

P.L. 105-184 was signed by President Clinton on June 23, 1998, and attempts to deter fraudulent telemarketers by raising the federal criminal penalties for telemarketing fraud and permitting the seizure of a criminal’s money and property to make restitution to victims. Also, if persons over the age of 55 were targets of the fraudulent telemarketing activities, criminals may be sentenced to additional prison time.

Protecting Seniors from Fraud Act

President Clinton signed the Protecting Seniors from Fraud Act, P.L. 106-534, on November 22, 2000. This Act finds that an estimated 56% of the names on calling lists of illicit telemarketers are individuals aged 50 or older and that, as a result, older Americans are often the target of telemarketing fraud.

Among other things, this Act:

- Authorizes \$1 million for each of the fiscal years 2001 through 2005 to be appropriated to the Attorney General (Department of Justice) for senior fraud prevention program(s) and directs the Comptroller

General to submit a report to Congress on the effectiveness of the program(s).

- Directs the Department of Health and Human Services to provide and disseminate within each state information that both educates and informs senior citizens about the dangers of fraud, including telemarketing fraud. This information may be distributed via public service announcements, printed matter, direct mailings, telephone outreach, or the Internet.
- Instructs the Attorney General to conduct a study of crimes against senior citizens. Among other issues, the report must address the nature and extent of telemarketing fraud against seniors.
- Directs the Attorney General, not later than two years after the date of enactment of this Act, to include statistics relating to crimes against seniors in each National Crime Victimization Survey.
- Expresses the sense of the Congress that state and local governments should incorporate fraud avoidance information and programs into programs that provide assistance to the aging.

Crimes Against Charitable Americans Act of 2001

The Crimes Against Charitable Americans Act of 2001 was passed as Section 1011 of the Uniting and Strengthening American by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT ACT), P.L. 107-56, and was signed by President George W. Bush on October 26, 2001.

Passed following the September 11 attacks, Section 1011 amends the Telemarketing and Consumer Fraud and Abuse Prevention Act (see above) to expand the coverage of the FTC's Telemarketing Sales Rule to apply to calls made to solicit charitable contributions. The rule currently covers only calls made to sell goods and services. Charitable organizations are exempt from the rule. Although this law does not remove that exemption, it does permit the FTC to take action against a for-profit company that fraudulently, deceptively, or abusively solicits charitable contributions for charities. In addition, the Act increases the penalty for impersonating a Red Cross member or agent.

What Consumers Can Do

Hang Up

Simply say, "No, thank you. I'm not interested." No one has to make any special excuse or listen to the presentation of the person on the line.

Be Informed

Consumers can go to a local library and ask for help in finding information on telemarketing and telemarketing scams. The library's Internet connection (if available) will provide access to the Web sites listed in this report. If no Internet connection is available, one may contact the FTC to request information about the Telemarketing Sales Rule.

Federal Trade Commission
Public Reference Branch
6th Street and Pennsylvania Avenue, N.W.
Washington, D.C. 20580
[<http://www.ftc.gov>]

Contacting the local Better Business Bureau (BBB) to obtain information about telemarketing and the various types of telemarketing scams is another option. The BBB also provides information at its Web site [<http://www.bbb.org/library>].

Be Cautious

If a letter or postcard arrives or there is a message on a home answering machine stating that someone has won a free trip or a prize or a sweepstakes, be cautious. Consumers should check the area code for the number that must be called to claim a prize or respond to a telemarketing call before they make the call. Most Caribbean countries and Canada have area codes that are integrated into the U.S. telephone system and may be reached by direct dialing without using separate country codes. Simply making a call to certain area codes may incur substantial long-distance charges. Those charges will depend upon the area code called, long-distance carrier, length of call, a customer's long-distance calling plan (or lack thereof), and other factors. 800, 877, 888, 866, and 855 are the toll-free telephone prefixes used in the United States.

A list of area codes and the state, territory, or country served by a particular area code may be viewed at the Web site of the North American Numbering Plan Administration (NANPA), the administrator of the North American telephone numbering plan. The Web site is [http://www.nanpa.com/area_codes/index.html]. Also, the front section of a local phone book usually contains maps and listings identifying area codes. If a particular code is not listed, customers should call the phone company to determine what area an unfamiliar area code serves. According to an FCC Fact Sheet, there are approximately 317 area codes in service today. About 207 of them are within the United States. Area codes are constantly being added or revised.

If people respond to a prize announcement, they should not give out credit card, bank account, or Social Security numbers or send money to cover taxes, customs fees, etc., unless they completely understand all charges, procedures, and details concerning the offer. There are many different types of telemarketing scams involving many different types of products and services. For example, some of the known scams deal with stocks and other investments, automatic debit, charitable

donations, easy credit, credit cards, credit repair, advanced fee loans, magazine subscriptions, international telephone calls, prizes, sweepstakes, work-at-home schemes, and travel. If there is doubt, people can request that written documentation explaining the prize, product, or service be forwarded to them. Any reputable telemarketer will send the information. Consumers should take their time and not be pressured into responding immediately.

Reporting Incidents to the Authorities/Filing Complaints

If a consumer believes that he/she is a victim of a telemarketing scam or that a telemarketing concern is violating existing rules, they should report the incident(s). First, contact a local or state consumer affairs office or the state attorney general's office. The FTC's Telemarketing Sales Rule permits local authorities to prosecute telemarketing scam operators who operate across state lines, and individual states may have passed their own laws or established regulations concerning telemarketing.

Federal Trade Commission. Federal authorities may also be contacted. Victims of false or deceptive telephone solicitation sales practices may file a written complaint with the FTC by sending a description of their situation to:

Federal Trade Commission
Consumer Response Center
Drop H285
Washington, D.C. 20580
1-877-FTC-HELP (382-4357)(toll-free)

An electronic complaint form is available at the Do-Not-Call registry Web site: [<http://donotcall.gov/Complain/ComplainDefault.aspx>]. Also, information on complaints is available at [<http://www.ftc.gov>]. Click on "File a Complaint" at the top of the screen.

The information that is provided to the FTC may help the agency establish a pattern of violations that may require action. However, the FTC generally does not get involved in individual disputes with telemarketing companies.

The FTC also provides information about telemarketing fraud through its Ditch the Pitch Campaign at its Web site. Information is provided for consumers on protecting themselves and for businesses on complying with FTC regulations. Complaints about telemarketing practices may be filed at this site. See [<http://www.ftc.gov/bcp/online/edcams/telemarketing/index.html>].

National Fraud Information Center. Suspected fraudulent telemarketing activities may also be reported to the National Fraud Information Center (NFIC), a private, nonprofit organization that assists consumers with telemarketing complaints. NFIC forwards all appropriate complaints to the FTC. One may obtain information on telemarketing or report suspicious incidents to NFIC via telephone, mail, or the Internet.

National Fraud Information Center
P.O. Box 65868
Washington, D.C. 20035
1-800-876-7060
[<http://www.fraud.org>]

Federal Communications Commission. One may also contact the Federal Communications Commission if they believe violations of the Telephone Consumer Protection Act have occurred. Send a letter describing the complaint in detail to:

Federal Communications Commission
Consumer & Governmental Affairs Bureau
Complaints
445 12th Street, N.W.
Washington, D.C. 20554
1-888-CALL-FCC (1-888-225-5322)
Complaints may be filed online at the FCC Web site:
[<http://www.fcc.gov/cgb/complaints.html>]

Information is available at the following FCC Web pages:
[<http://www.fcc.gov/cgb/consumerfacts/tpa.html>] (unwanted telemarketing calls), or
[<http://www.fcc.gov/cgb/consumerfacts/unwantedfaxes.html>] (unwanted faxes), or [<http://www.fcc.gov/cgb/consumerfacts/telemarketscam.html>] (telemarketing scams)

Ask to Be Placed on a Do-Not-Call List. If someone wants to be placed on a firm or individual's do-not-call list, they should state clearly and firmly to the caller that their name is to be added to the list. The caller must take the name, add it to their list, and keep it there for 10 years. In addition, consumers should take down the name of the caller, the name of the firm or individual for whom they are making the call, and the address and telephone number where they can be reached. Note the date and time and keep a record of any additional calls that are received (if any) from the same source. If additional calls from the same source continue, a consumer may consider filing a suit in small claims court.

State Do-Not-Call Lists. Several individual states have passed laws establishing do-not-call lists within the state. Consumers should contact a local consumer affairs office, Better Business Bureau, or an appropriate state office to find out the particulars of their state's do-not-call list or if such a state list exists. In some cases, there may be a (monthly or annual) charge to be added to the list. If charges are assessed, state law, not FCC or FTC regulations, will determine the charges.

The December 18, 2002 FTC announcement of a national do-not-call registry does not mean the end of individual state do-not-call lists. The FTC registry, if implemented, covers only interstate calls. Each state may regulate telemarketing practices within its borders. As a result, a particular state's list may cover telemarketing firms operating solely within the borders of the state, while the same

firms would not be covered by the FTC's national registry since their calls do not cross state lines. The FTC is investigating electronic transfer of individual state lists to the national do-not-call registry. If such a transfer is possible, individuals from a transferred state list may not need to register with the FTC. The transfer would automatically add names from a state list to the national registry. More information on such transfers will be released by the FTC at a later date.

The FTC provides a list of states with do-not-call lists and contact phone numbers for those states at [<http://www.ftc.gov/bcp/online/pubs/alerts/dncalrt.htm>]. In addition, the DMA provides contact information for state do-not-call lists at its Web site [<http://www.the-dma.org/government/donotcalllists.shtml>].

Direct Marketing Association. The Direct Marketing Association, a national trade association serving the direct marketing industry, maintains a national do-not-call list. If someone adds their name to the national list, it will take a few months for it to take effect, and the name will go *only* to the companies who subscribe to the DMA's list service. Telemarketing companies are not required to subscribe to the service, and getting a name on any do-not-call list does not remove it from all telemarketers' lists. The list is updated four times per year, in January, April, July, and October. There is no charge to add a name to the list. Send name, address, and home telephone number (including area code) to:

Telephone Preference Service
Direct Marketing Association
P.O. Box 9014
Farmingdale, NY 11735-9014
[<http://www.the-dma.org/consumers/consumerassistance.html>]

In some instances, telemarketers use automated dialing mechanisms that call every number in a targeted geographic area or with a certain prefix. If someone is in one of those areas or has the designated telephone prefix, they will not escape the call even if their name is on a do-not-call list. Even unlisted numbers are called in these situations. The DMA has established operational guidelines for its members using automatic dialing equipment and software.

The DMA also offers a free Mail Preference Service (MPS) for those who wish to receive less advertising mail at home. As with the Telephone Preference Service, to register for the MPS, a postcard or letter providing name, home address, and signature must be sent to the DMA.

Mail Preference Service
Direct Marketing Association
P.O. Box 9008
Farmingdale, NY 11735-9008
[<http://www.the-dma.org/consumers/consumerassistance.html>]

DMA Privacy Promise. On July 7, 1999, the DMA announced implementation of its "*DMA Privacy Promise to American Consumers.*" This effort

requires all DMA members to adhere to a set of consumer privacy protection measures. These measures include:

- Disclosing to consumers when contact information about them may be shared with other marketers;
- Providing a means for consumers to opt-out of any information sharing arrangement;
- Honoring any individual consumer's request not to receive any further solicitations from the marketer; and
- Requiring member companies to use the DMA's Mail Preference and Telephone Preference Services to maintain updated marketing lists of consumers who have chosen to place their name on these lists.

DMA members were given reasonable time to comply, and through the use of secret shoppers, decoys, review of consumer complaints, and random staff contacts, the DMA seeks to assure that its members comply with these measures. If a member refuses to correct its procedures when asked to do so, the DMA Board may expel the company and make its actions public.

In addition, the DMA, in conjunction with the FTC and FCC, has developed a Web page providing advice to consumers who shop by phone. The site provides shopping tips, information on federal laws and regulations, and information on filing complaints [<http://www.the-dma.org/consumers>].

The DMA also provides a Web site where complaints concerning receipt of telemarketing calls may be placed:[<http://www.the-dma.org/review/complaint.shtml>].

The Direct Marketing Association
1120 Avenue of the Americas
New York, NY 10036-6700
(212) 768-7277

American Teleservices Association. The American Teleservices Association (ATA) is a national association representing call centers, trainers, consultants, and equipment suppliers in the telemarketing industry. ATA advocates for its members interests in both in federal and state legislative bodies, provides educational opportunities for its members, and acts as the industry's information clearinghouse. In addition, ATA has established a code of ethics for its members.

American Teleservices Association
3815 River Crossing Parkway
Suite 20
Indianapolis, IN 46240
(317) 816-9336
[<http://www.ataconnect.org>]