



Federal Trade Commission
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FTC Announces Final Amendments to Telemarketing Sales Rule, Including National "Do Not Call" Registry

Registry Will Provide Consumers With More Control Over Telemarketing Calls They Receive; Other Changes Concern Billing Authorization, Charitable Solicitations, and Use of Caller-ID

The Federal Trade Commission today announced a series of amendments to the Telemarketing Sales Rule (TSR) including the development of a national "do not call" registry that empowers consumers to stop most unwanted telemarketing calls. The other amendments include new provisions that will:

- crack down on unauthorized billing by telemarketers;
- impose tight new restrictions on the practice of "call abandonment" - where a consumer rushes to answer the phone, only to find "dead air;" and
- require telemarketers to transmit Caller-ID information, so that consumers who subscribe to Caller-ID services will know who is calling.

The majority of the changes will become effective immediately. Creation of the "do not call" registry, however, requires additional time. Information about the TSR amendments and the "do not call" registry is available at www.ftc.gov/donotcall. It is planned that the system will be ready to begin accepting consumer registrations about four months after funding approval by Congress. Registration via the Internet will be available nationwide at that time, but registration via toll-free number will be phased in by region. Approximately two months after the completion of the phased-in registration, telemarketers will be able to access the registry to "scrub" their call lists so that they can avoid calling consumers on the registry. A month after that, the Commission will begin enforcing the "do not call" registry provisions. Registration will be good for five years, or until the consumer changes his or her phone number or moves.

"These amendments redefine the nature of telemarketing for both consumers and businesses," said FTC Chairman Timothy J. Muris. "They protect consumers' privacy, give them a choice about whether to receive most telemarketing calls, and provide enhanced protections against fraudulent telemarketers. Soon, signing up for the national "do not call" registry will be just a mouse click or toll-free call away."

The National "Do Not Call" Registry

Under the amended Rule, the FTC will establish a centralized national "do not call" registry to enable consumers to stop most unwanted telemarketing calls by making just one request per phone number to the Commission, either via the Internet on a dedicated Web site or by calling a toll-free number. The Commission's decision to develop such a registry comes after nearly a year of analysis, in which more than 60,000 public comments were received, the overwhelming majority of which supported a national "do not call" list.

It is important to note that it will take the Commission time to develop the national "do not call" registry system and put it into place. Consumers will not be able to sign up immediately. It is expected that once funding approval is received from Congress, it will take about four months to develop the system and another two months for phased-in registration before consumers will receive fewer unwanted telemarketing calls. The Commission will announce the toll-free number and the order in which regions can enroll, as well as instructions for Internet registration, at a later date. A separate sign-up will be required for each telephone number a consumer wishes to register.

There will be no charge to consumers to register their phone number with the FTC's national "do not call" registry. Telemarketers will, however, be required to pay for access to the names on the list, and will have to "scrub" their calling lists every three months to remove any consumers' telephone numbers that are included in the new registry.

The amended Rule contains a narrowly tailored exemption under which telemarketers may continue to call consumers with whom they have an "established business relationship," if the consumer 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. Even if there is an "established business relationship," consumers can make a specific request to the company not to call. Also, if there is a particular company from whom a consumer wants to receive telemarketing calls, the consumer can give that company written permission to call, even if the consumer is on the national registry.

In addition, the amended Rule retains the existing company-specific "do not call" provisions that require a telemarketer to maintain its own "do not call" list and to honor consumers' requests to be placed on that list and receive no further calls. Finally, the amended Rule exempts telemarketers calling to solicit charitable contributions from compliance with the provisions of the national registry, but requires that they accept entity-specific "do not call" requests.

Billing Authorization Provisions

The Rule review and Rule amendment proceeding focused considerable attention on telemarketers and sellers billing charges to consumers' credit card and other accounts without the account holder's authorization or knowledge. In some instances, these unauthorized charges result from the fact that telemarketers and sellers often obtain consumers' account numbers or other billing information from sources other than the account holders themselves before they even place a sales call to the account holders. The amended Rule contains a number of provisions to address this problem.

First, telemarketers will be prohibited from receiving unencrypted consumer account numbers, except when the disclosure or receipt of these unencrypted numbers is for the purpose of processing a payment for goods or services (or a charitable contribution) according to the terms of a transaction approved by the consumer.

Second, in every telemarketing transaction, the amended Rule bans unauthorized billing, prohibiting telemarketers from processing any billing information for payment without the express informed consent of the customer or donor. It also specifies exactly how express informed consent must be obtained whenever a telemarketer: 1) has the ability to charge the consumer's account without the consumer divulging his or her account number, and 2) the offer the telemarketer is promoting involves a so-called "free-to-pay conversion" feature - where there is a free trial period after which the consumer automatically incurs charges, unless he or she takes affirmative action to cancel. In such a scenario, the telemarketer must: obtain the consumer's express agreement to be charged, and to be charged using a particular account number; elicit

from the consumer at least the last four digits of the account number to be charged; and make and maintain an audio recording of the entire telemarketing transaction.

The amended Rule broadly requires disclosure of all material terms of any offer that involves a free trial period after which the consumer automatically incurs charges, unless he or she takes affirmative action to cancel. The Rule also prohibits specific misrepresentations in connection with such offers.

The amended TSR also tightens the existing provisions governing transactions where a novel or unfamiliar payment method is used - such as "demand drafts" (or "phone checks" - where a consumer's checking account is debited based only on the consumer's disclosure of the account number, not on writing a check), or charges to an existing mortgage account, or a utility account. The amended Rule specifies the information that telemarketers must disclose to ensure that consumers have given their "express verifiable authorization" to incur charges using such novel payment methods. These provisions apply for any payment method other than credit cards subject to the Fair Credit Billing Act or debit cards subject to the Electronic Funds Transfer Act.

Charitable Solicitations

The amended Rule modifies the definition of telemarketing to include interstate calls made to solicit charitable contributions. It also requires telemarketers calling to solicit such contributions to promptly disclose the name of the organization making the request and that the purpose of the call is to ask for a charitable contribution - as required by the USA PATRIOT Act. These new provisions, like analogous provisions applicable to commercial sales calls in the original Rule, will ensure that consumers quickly receive key information necessary to enable them to decide whether to prolong the initial intrusion into their privacy, or to terminate the call. They will also help to protect consumers from deceptive and fraudulent charitable fundraising. Also as required by the USA PATRIOT Act, the amended TSR expressly prohibits certain misrepresentations in charitable fundraising calls. Finally, the amended Rule exempts charitable fundraising calls from compliance with the Rule's new national "do not call" registry, but does require that such telemarketers accept and adhere to entity-specific "do not call" requests from consumers.

Call Abandonment and Caller ID

During the public comment period, many consumers expressed concern about the number of "dead-air" calls that they were receiving at home. Such calls typically occur when telemarketers use "predictive dialers" or other automatic dialing software to call many consumers at once. The automatic equipment is very efficient for telemarketers, but it inevitably makes more calls that connect to consumers than there are available sales representatives to handle the calls. The "dead air" actually results from calls that are abandoned because there are not enough sales representatives available to talk to every consumer who answers the phone.

Call abandonment violates the amended Rule. The amended Rule, however, gives businesses a "safe harbor" on call abandonment if they meet certain requirements. Specifically, 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.

Regarding the use of Caller-ID devices, the amended Rule requires telemarketers to transmit their telephone number to a consumer's Caller-ID service. Further, if the telemarketer's carrier makes it possible to transmit the calling company's name, the telemarketer will have to transmit this information as well. This will help consumers to know exactly who is calling and to protect their own privacy. It will also increase telemarketers' accountability, and aid law enforcement in identifying companies violating the "do not call" and other provisions of the amended Rule. When sending this information, the telemarketer will be allowed to substitute the name and customer or donor service number of the seller or charitable organization on behalf of which the call is being placed. Telemarketers will have 12 months to come into compliance with each of the new requirements related to Caller-ID.

The Commission vote to approve publication of a notice of final rulemaking in the Federal Register announcing the amendments to the TSR was 5-0, with Commissioner Orson Swindle issuing a separate concurring statement.

In his concurring statement, Commissioner Orson Swindle stated, "I wholeheartedly support the amendments to the Telemarketing Sales Rule . . . because I believe that they will help protect consumers from deceptive and abusive telemarketing practices. In particular, these amendments will give consumers the ability to avoid the sheer volume of unwanted telemarketing calls that many consider to be a nuisance."

Commissioner Swindle explained that he believed the national "do-not-call" registry would go a long way to help consumers prevent unwanted intrusions into their homes. He noted, however, that a number of entities were not subject to the TSR's requirements. The Commission lacks jurisdiction, in whole or in part, over the calls of entities such as banks, telephone companies, airlines, insurance companies, credit unions, charities, political campaigns, and political fund raisers. "From the perspective of consumers," Commissioner Swindle stated, "the right to be let alone is invaded just as much by unwanted calls from exempt entities (e.g., banks, telephone companies, or political fund-raisers) as it is by such calls from covered entities. . . . Therefore, I believe that the entire spectrum of entities that make telemarketing calls to consumers should be subject to do-not-call requirements."

Commissioner Swindle also stated that he agreed for the most part with the Commission's method of determining what constitutes an abusive practice under the Telemarketing Act and the TSR. When the Commission seeks to identify practices as abusive that are less distinctly within the parameters of the examples included in the Telemarketing Act, the Commission employs its unfairness analysis. Commissioner Swindle stated that he would have preferred it had the Commission looked to the plain meaning of the term "abusive," and then formulated a separate standard to identify abusive telemarketing practices. Commissioner Swindle nevertheless agreed with the Commission's conclusion that a telemarketing practice that meets the strict unfairness standard will constitute an abusive practice for purposes of the Telemarketing Act and the TSR. In light of the rulemaking record, he supported the TSR amendments that are analyzed under this standard.

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