

**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.)

**COMMENTS OF THE NATIONAL ASSOCIATION
OF STATE UTILITY CONSUMER ADVOCATES**

I. INTRODUCTION

On November 27, 2007, the Federal Communications Commission (“FCC” or “Commission”) adopted a *Notice of Proposed Rulemaking* (“*Notice*”) in this proceeding.¹ The *Notice* seeks comment on the Commission’s proposal to amend its rules concerning the national registry for consumers who do not wish to receive telemarketing calls (“Registry”).² The Commission proposes to require 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.”³

¹ FCC 07-203, 22 FCC Rcd 21237 (2007); 72 Fed. Reg. 71,099 (December 14, 2007).

² 47 C.F.R. § 64.1200(c)(2).

³ *Notice*, ¶ 1.

The National Association of State Utility Consumer Advocates (“NASUCA”)⁴ supports the Commission’s proposal. The proposed rule makes the Registry more responsive to the desires of consumers. The Commission correctly observed that the proposed rule would reduce the burden on approximately 30 million consumers whose registration will expire by August 2008:

Such expirations will leave millions of consumers without protection against unwanted telemarketing calls – protections they have come to rely on since registering their numbers in 2003. Removing the current 5-year registration period 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. We believe requiring telemarketers to continue honoring do-not-call registrations will also minimize any consumer confusion resulting from a sudden increase in telemarketing calls received when registrations begin to expire next year.⁵

NASUCA recommends that the Commission adopt its proposed rule.

In addition, the Commission should address the issue of the five-year limit on honoring company-specific do-not-call requests found in 47 C.F.R. § 1200(d)(6). The millions of consumers who make company-specific requests often have no way of knowing when the five years has expired. NASUCA urges the Commission to eliminate the five-year limit on the retention of company-specific do-not-call requests, thus requiring telemarketers to honor such requests until otherwise notified by the individual.

⁴ NASUCA is a voluntary, national association of consumer advocates in more than 40 states and the District of Columbia, organized in 1979. NASUCA’s members are designated by the laws of their respective states to represent the interests of utility consumers before state and federal regulators and in the courts. *See, e.g.*, Ohio Rev. Code Chapter 4911; 71 Pa. Cons. Stat. Ann. § 309-4(a); Md. Pub. Util. Code Ann. § 2-205(b); Minn. Stat. Ann. Subdiv. 6; D.C. Code Ann. § 34-804(d). Members operate independently from state utility commissions, as advocates primarily for residential ratepayers. Some NASUCA member offices are separately established advocate organizations while others are divisions of larger state agencies (e.g., the state Attorney General’s office). Associate and affiliate NASUCA members also serve utility consumers, but have not been created by state law or do not have statewide authority.

⁵ *Notice*, ¶ 9.

II. THE COMMISSION SHOULD ADOPT ITS PROPOSED RULE.

In response to the Do-Not-Call Implementation Act,⁶ the Commission in July 2003 adopted rules that prohibit telemarketers from calling “[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.”⁷ The Commission proposes to eliminate the second sentence of the rule, so that there would be no time limit on honoring registrations on the Registry.

The Commission seeks comment on several issues concerning its proposed rule:

- How best to implement the proposed rule.⁸
- How best to coordinate with the Federal Trade Commission (“FTC”) to most effectively institute the rule change in a meaningful, consistent way.⁹
- What impact, if any, the proposed rule would have on telemarketers, particularly small businesses.¹⁰

NASUCA’s Comments will focus on the first two issues. NASUCA intends to address the third issue in the reply comment phase, after reviewing comments from other parties. NASUCA concurs, however, with the Commission’s tentative conclusion that “the enhanced consumer privacy protections created by this proposed rule amendment, taken

⁶ Pub. L. No. 108-10, 117 Stat. 557 (2003), codified at 15 U.S.C. § 6101.

⁷ 47 C.F.R. § 64.1200(c)(2). CG Docket No. 02-278, Report and Order, 18 FCC Rcd 14014 (2003).

⁸ *Notice*, ¶ 7.

⁹ *Id.*, ¶ 11.

¹⁰ *Id.*, ¶ 12.

in conjunction with the benefits to the federal government in administering the National Registry, outweigh any potential impact” on telemarketers.¹¹

There should be little problem in implementing the proposed rule. By eliminating the five-year provision of the current rule, the Commission would merely prohibit telemarketers from calling a number that is found on the Registry. Thus, the proposed rule would clarify that telemarketers are not to call a number that is on the Registry, no matter when the number was originally registered. The onus would be on the administrator of the Registry, not telemarketers, to determine whether and when a number may be called. Telemarketers need only to continue using a version of the Registry that is no more than 31 days old, as required by 47 C.F.R. § 64.1200(c)(2)(i)(D).

In addition, there would seem to be little need for coordination with the FTC. The FTC’s rule is similar to the proposed rule in that it contains no time limitation on honoring a do-not-call registration. The FTC’s rule makes it an abusive practice for a telemarketer to initiate any outbound telephone call to a person when:

(B) that person’s telephone number is on the “do-not-call” registry, maintained by the Commission, of persons who do not wish to receive outbound telephone calls to induce the purchase of goods or services unless the seller

(i) has obtained the express agreement, in writing, of such person to place calls to that person. Such written agreement shall clearly evidence such person’s authorization that calls made by or on behalf of a specific party may be placed to that person, and shall include the telephone number to which the calls may be placed and the signature of that person; or

(ii) has an established business relationship with such person, and that person has not stated that he or she does not wish to receive

¹¹ Id.

outbound telephone calls under paragraph (b)(1)(iii)(A) of this section....¹²

Thus, as with the proposed rule, the FTC's rule prohibits telemarketers from calling a number that is found on the Registry, unless the situation falls into one of the two exceptions found in the rule.

The proposed rule is simpler and more in tune with the FTC's rule than the Commission's current rule, and would provide consumers with a tremendous benefit by helping to ensure that they will not receive unwanted telemarketing calls as long as their number is on the Registry. Eliminating the time limitation would help consumers avoid the irritation and disruption to their lives caused by unwanted telemarketing calls. And because the Commission's jurisdiction reaches beyond the FTC's (i.e., to intrastate calls and telemarketing by financial institutions, banks and common carriers¹³), the proposed rule would leave no doubt that a consumer's number cannot be called so long as it is on the Registry. The Commission should adopt its proposed rule.

III. THE COMMISSION SHOULD ALSO MAKE ITS RULES CONSISTENT WITH FTC RULES BY ELIMINATING THE FIVE-YEAR LIMITATION ON HONORING COMPANY-SPECIFIC DO-NOT-CALL REQUESTS.

There are exceptions to the prohibition on making telemarketing calls to numbers found on the Registry, the most common of which is for companies that have an established business relationship with the person being called.¹⁴ In those instances, however, the Commission's rules require that "[a] person or entity making calls for

¹² 16 C.F.R. § 310.4(b)(1)(iii)(B).

¹³ See 15 U.S.C. § 45(a)(2).

¹⁴ 47 C.F.R. § 64.1200(f)(12)(ii).

telemarketing purposes must maintain a record of a consumer’s request not to receive further telemarketing calls. A do-not-call request must be honored for 5 years from the time the request is made.”¹⁵ This creates a similar – if not greater – burden on consumers than the five-year limitation in 47 C.F.R. § 64.1200(c)(2). Rather than the broad protection of the Registry, the company-specific rule requires consumers to remember when they asked a specific company not to call.¹⁶ Because this is difficult for most consumers (unless they keep records of their company-specific requests), the five-year-limitation on company-specific requests makes consumers more susceptible to unwanted telemarketing calls.

The Commission should enhance the ability of consumers to protect themselves from unwanted telemarketing calls by eliminating the five-year limitation on honoring company-specific do-not-call requests. The FTC’s rules contain no time limitation on company-specific requests. Under the FTC’s rules, it is an abusive sales practice to initiate an outbound telemarketing call to a person when “that person previously has stated that he or she does not wish to receive an outbound telephone call made by or on behalf of the seller whose goods or services are being offered or made on behalf of the charitable organization for which a charitable contribution is being solicited.”¹⁷

The Commission should adopt a similar consumer protection for company-specific do-not-call requests. In addition to eliminating the five-year limitation on telemarketing calls made to numbers found on the Registry, the Commission should

¹⁵ 47 C.F.R. § 1200(d)(6).

¹⁶ In order to comply with the rule, telemarketers also would need to know when the five-year period expires for each person who has asked not to be called by the telemarketer.

¹⁷ 16 C.F.R. § 310.4(b)(1)(iii)(A).

delete the five-year limitation on honoring company-specific do-not-call requests.¹⁸ The Commission thus should revise 47 C.F.R. § 1200(d)(6) to read: “A person or entity making calls for telemarketing purposes must not call a consumer who previously has stated that he or she does not wish to receive a telemarketing call made by or on behalf of the seller whose goods or services are being offered, and must maintain a record of the consumer’s request not to receive further telemarketing calls.”¹⁹

IV. CONCLUSION

The Commission’s proposed rule would help enhance the consumer protections of the Registry. The Commission should adopt its proposed rule, and extend the consumer benefits of the proposed rule to company-specific do-not-call lists.

Respectfully submitted,

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¹⁸ This would also further the mandate in Section 3 of the Do-Not-Call Implementation Act that the Commission “maximize consistency with the rule promulgated by the Federal Trade Commission (16 CFR 310.4(b)).”

¹⁹ Tax-exempt nonprofit organizations are statutorily exempt from the FCC’s telemarketing rules. See 47 U.S.C. § 227(a)(3)(C). Thus, NASUCA’s proposed rule focuses on sellers of goods and services.

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January 14, 2008