

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

<i>In the Matter of:</i>)	
)	CG Docket No. 02-278
)	
<i>Rules and Regulations Implementing</i>)	
<i>The Telephone Consumer Protection Act of 1991</i>)	
)	

COMMENTS OF THE AMERICAN TELESERVICES ASSOCIATION

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COMMENTS OF THE AMERICAN TELESERVICES ASSOCIATION

The American Teleservices Association (“ATA”) respectfully submits these comments in response to the Commission’s proposed rulemaking to require telemarketers to honor registrations with the National Do-Not-Call Registry until the registrations are cancelled by the consumers or the telephone numbers are removed by the database administrator because they were disconnected *or* reassigned. If the proposed rule is implemented, consumer registrations will not expire after five years.

ATA supports the Commission’s rulemaking, provided the Commission ensures that adequate hygiene is performed on the Registry to guaranty that telephone numbers are removed when they are disconnected or reassigned.

I. OVERVIEW

ATA is a national trade organization with an industry-wide membership that collectively produces over \$500 billion in annual sales. It is the only national trade association that is exclusively devoted to the teleservices industry. ATA’s member organizations represent all facets of the teleservices industry, and provide traditional and innovative services to Fortune 500 companies, nonprofit organizations, charitable institutions and organized political parties. ATA’s membership

includes scores of companies that are obligated to subscribe to the Registry annually pursuant to the Commission's and Federal Trade Commission's existing regulations.¹

II. DISCUSSION

A. ATA Supports The Commission's Proposal To Allow Telephone Numbers To Remain On The Registry Until The Registrations Are Cancelled By The Consumers Or Until The Telephone Numbers Are Removed By The List Administrator, But Only If Appropriate Hygiene Is Performed Regularly On The Registry.

On July 25, 2003, the Commission published its Final Rule establishing the National Do-Not-Call Registry.² The Commission's Final Rule coincided with the Federal Trade Commission's establishment of a national Do-Not-Call Registry.³ Although each agency implemented its own set of national do-not-call regulations, a single national registry of telephone numbers that telemarketers are prohibited from calling, maintained by the FTC, serves both agencies. The two agencies' rules are similar in most respects, although they continue to contain drastic differences.

Of particular importance to ATA's membership is the manner and frequency in which telephone numbers are removed from the national Do-Not-Call Registry ("Registry"). Both the Commission and the FTC grappled with how long telephone registrations on the Registry should remain effective. The Commission adopted the FTC's reasoning by concluding that five (5) years is an appropriate time period for which registrations should remain effective: "We conclude that the retention period for both the national and company-specific do-not-call requests will be five years. *See*: FTC Order, 68 FR 4580 at 4640 (January 29, 2003)."⁴ A significant factor in the Commission's reliance upon the FTC's reasoning

¹ ATA currently has two petitions pending before the Commission in this docket. One seeks a Declaratory Ruling that preempts certain provisions of the New Jersey Consumer Fraud Act and the New Jersey Administrative Code filed in August 2004. The other seeks a Declaratory Ruling that the Commission has exclusive regulatory jurisdiction over interstate telemarketing calls filed in April 2005. ATA urges the Commission to act on these petitions to clear the enormous confusion that has resulted in the telemarketing industry.

² 68 Fed. Reg. 44,144 (July 25, 2003)

³ 63 Fed. Reg. 45,134 (July 31, 2003)

⁴ 68 Fed. Reg. at 44,146.

is the FTC's assurance that telephone numbers that have been disconnected *or* reassigned will be removed from the Registry.⁵

ATA supports the Commission's proposal to allow telephone numbers to remain on the Registry until the registration is cancelled by the consumer or until it is removed by the list administrator because the telephone number has been disconnected *or* reassigned.

B. The List Administrator Should Purge Telephone Numbers From The Registry When They Are Disconnected *Or* Reassigned.

Despite the Commission's reliance upon the FTC's assurance that numbers will be removed from the Registry when they are disconnected *or* reassigned, the FTC modified its standard. It currently only removes telephone numbers from the Registry after they have been disconnected and reassigned. This modification was apparently made on the FTC's own accord and without public notice to the industry. It does not appear that the FTC even consulted the Commission on this modification, as the Commission's Notice of Proposed Rulemaking seeks comments on registration permanence taking into account the original purging standard (i.e., "disconnected *or* reassigned") rather than the FTC's modified standard.⁶

In its recent Congressional testimony, the FTC acknowledged that the Registry would be "periodically purged of numbers that have been disconnected or reassigned."⁷ It subsequently acknowledged in the same testimony that numbers are not purged until they are disconnected *and* reassigned:

⁵ See: 68 Fed. Reg. at 44146 ("The FTC indicates that to guard against the possibility of including disconnected or reassigned telephone numbers, technology will be employed on a monthly basis to check all registered telephone numbers against national databases, and remove those numbers that have been disconnected or reassigned.")

⁶ See: 72 Fed. Reg. 71,099, 71,100 (Dec. 14, 2007) ("The Commission tentatively concludes that it should amend its rules so that telemarketers will 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." (Emphasis added)).

At our request, the contractor takes a conservative approach in purging numbers from the Registry. Rather than purging a number from the Registry because it has been disconnected, the contractor purges a number only after it has been disconnected and reassigned.⁸

While this modification of the purging standard was done without public fanfare and certainly without industry notice, ATA suggests that the Commission was correct in its initial conclusion and in the current proposed rulemaking that telephone numbers should be purged from the Registry when they are disconnected *or* reassigned. This standard should be maintained and ATA encourages the Commission to urge the FTC to revert to its original standard.

The FTC's insistence on maintaining telephone numbers on the Registry until they are disconnected *and* reassigned imposes increased costs on telemarketers. The practice results in significantly larger Registry file sizes, leading to lengthier download times, increased storage space requirements, expanded database management tools, and more records to "scrub." Although large companies have the capabilities to absorb the costs associated with additional storage space, management requirements, scrubbing, etc., small businesses are adversely affected due to their limited resources.

C. The List Administrator Should Perform The Appropriate Hygiene At Least Twice Per Month To Remove Telephone Numbers That Have Been Disconnected *Or* Reassigned.

While frightfully little is known about the manner in which the FTC's list administrator performs list hygiene, the FTC's recent Congressional testimony shed some light on the process:

The Registry contractor subcontracts the process of purging obsolete numbers from the Registry to a list broker that provides consumer information to a host of large clients. The list broker states that it obtains

⁷Lydia Parnes, Dir. Bureau of Consumer Prot., Fed. Trade Comm'n, Enhancing FTC Consumer Protection in Financial Dealings, with Telemarketers, and the Internet, Address Before the Comm. on Energy and Commerce, Subcomm. on Commerce, Trade and Consumer Prot., U.S. H.R. (Oct. 23, 2007).

⁸ *Id.*

information on every number in the North American Dialing Plan that is updated ten times per day. It acquires from Local Exchange Carriers (“LECs”) daily updates of subscriber data, including disconnect and reconnect data and the dates these events occurred. To the best of the list broker’s knowledge, it receives data from every LEC and the accuracy of the data it receives is consistent with the accuracy of the LECs’ billing records. Once a month, the Registry contractor compares the Registry against the database maintained by the list broker to remove those telephone numbers that have been coded as disconnected and subsequently reassigned.⁹

Although this testimony reveals that the subcontracted list administrator receives information necessary to perform the required hygiene on a daily basis, it also reveals that the administrator purges telephone numbers from the Registry only once per month. Given the frequency in which the subcontractor receives information necessary to perform the hygiene, purging telephone numbers from the Registry once per month is inappropriate regardless of the appropriate purging standard discussed above. This delayed purging unnecessarily increases the size of the Registry and has the same adverse affects and monetary consequences on small businesses.

Furthermore, the delayed purging standard results in telephone numbers remaining on the Registry significantly longer than necessary. Consider a seller that accesses the Registry on the 25th day of every month. If a telephone number may be purged on April 1st under the appropriate standard but the list administrator does not purge the record until May 1st, that telephone number will not be removed from the Seller’s do-not-call records until its May 25th download, nearly two months after the number should have been purged. In addition to the obvious burden this practice imposes on sellers and telemarketers and the costs associated with an artificially large Registry discussed previously, it prevents consumers who are likely new residents in their neighborhoods from receiving offers in which such consumers are traditionally interested (e.g., television programming, telephone and Internet service,

⁹ *Id.*, note 19, at 10.

newspaper subscriptions, etc.), even though they have not enlisted their telephone numbers on the Registry.

ATA encourages the Commission to require local exchange carriers to continue to provide information to the list administrator on a daily basis so that purging may occur as frequently as possible, and coordinate with the FTC to ensure that telephone numbers are purged from the Registry more frequently than monthly. ATA suggests that purging should take place no less frequently than bi-weekly.

III. Conclusion

ATA generally supports the Commission's initiative to honor consumers' registrations with the National Do-Not-Call Registry until the registrations are cancelled by consumers or the telephone numbers are removed by the database administrator. However, ATA asserts that attention must be given to the appropriate standard pursuant to which the database administrator is instructed to remove telephone numbers from the Registry.

Telephone numbers should be removed from the Registry when they are disconnected *or* reassigned. It was based upon this standard that the Commission agreed with the FTC as to how the Registry should be purged of records. However, the FTC has since changed this standard. The use of a more liberal standard artificially increases the Registry's size and imposes greater costs on small businesses.

ATA also encourages the Commission to review the frequency in which numbers are purged from the Registry. Despite the database administrator's receipt of information necessary to purge numbers on a daily basis, it only performs the purging once per month. This, too, artificially increases the size of the Registry and prevents consumers from receiving telemarketing offers that they may very well desire.

These issues must be reviewed with the FTC to ensure that the Registry is maintained in a manner that is just to all parties, while ensuring that small businesses are not unduly burdened.

Respectfully submitted,

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