

ANNUAL REPORT TO CONGRESS FOR FY 2003 AND 2004

PURSUANT TO THE DO NOT CALL IMPLEMENTATION ACT
ON IMPLEMENTATION OF
THE NATIONAL DO NOT CALL REGISTRY

FEDERAL TRADE COMMISSION

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I. INTRODUCTION

The Do Not Call Implementation Act (“DNCIA”)¹, signed into law on March 11, 2003, mandates, *inter alia*, that the Federal Trade Commission (“FTC” or “Commission”) and the Federal Communications Commission (“FCC”) each transmit to Congress an annual report on the National Do Not Call Registry for fiscal years 2003 to 2007, inclusive. Specifically, the DNCIA requires that these annual reports provide the following information:

- (1) an analysis of the effectiveness of the Registry;
- (2) the number of consumers who have placed their telephone numbers on the Registry;
- (3) the number of entities paying fees to access the Registry and the amount of such fees;
- (4) an analysis of the progress of coordinating the operation and enforcement of the National Registry with similar registries established and maintained by various States;
- (5) an analysis of the progress of coordinating the operation and enforcement of the National Registry with the enforcement activities of the FCC; and
- (6) a review of the FTC’s enforcement proceedings u M

II. ANALYSIS OF THE EFFECTIVENESS OF THE NATIONAL DO NOT CALL REGISTRY

When the National Do Not Call Registry was established, the Commission set out three separate measures by which the project's success could be judged:

- (1) having the system fully operational in calendar year 2003;
- (2) ensuring that the system could enroll approximately 60 million telephone numbers during the first year of operation; and

calling a toll-free number from the telephone line they wish to register, or over the Internet. The process is fully automated, takes only a few minutes, and requires consumers to provide minimal personally identifying information.⁵

On September 2, 2003, the telemarketer component of the National Registry became available, as scheduled. Telemarketers and sellers can access registered telephone numbers, and pay the appropriate fee for that access, if any, through an Internet website dedicated to that purpose. The only information about consumers that companies receive from the National Registry is the registered telephone number. Those numbers are sorted and available for download by area code. Companies may also check a small number of telephone numbers at a time via interactive Internet pages.

As of October 1, 2003, the consumer complaint mechanism of the National Registry was ready to be placed into operation.⁶ Consumers who receive unwanted telemarketing calls may register a complaint via either a toll-free telephone number, using an interactive voice response system, or via the Internet. To conduct investigations, law enforcement officials also may access data in the National Registry, including consumer registration information, telemarketer access information, and consumer complaints.

With the implementation of the consumer complaint mechanism, the National Registry was fully operational in October 2003, well before the end of the calendar year.

ENROLLING APPROXIMATELY 60 MILLION TELEPHONE NUMBERS

Based on the experiences of the various States with do not call registries, the FTC needed to ensure that the National Registry could enroll as many as 60 million telephone numbers during the first year of operation. The National Registry met that level of demand.

From the outset, the National Do Not Call Registry was enormously popular. Within four days of the initial launch, more than 10 million telephone numbers were registered. After the first 40 days of operation, more than 30 million numbers were registered. As of June 2004, one year after opening registration to the public, the National Registry contained more than 62 million telephone numbers.⁷

REDUCING THE NUMBER OF UNWANTED TELEMARKETING SOLICITATIONS

The Commission believes that the fundamental goal of the National Do Not Call Registry – to provide consumers with a simple, free, and effective means to limit unwanted telemarketing calls should they so choose – has been realized. The results of two surveys conducted after implementation of the National Registry showed that a large majority of respondents who had placed their telephone numbers on the Registry reported receiving fewer telemarketing calls as a result. One survey was conducted by Harris Interactive®, which surveyed nearly 3,400 adults in January 2004. That survey found that 92% of those who signed up for the National Registry had received fewer telemarketing calls since signing up, and 25% stated that they had received no telemarketing calls. The other survey was conducted by Customer Care Alliance, which surveyed 850 adults nationwide between February and April, 2004. In this survey, the 60% of respondents who had registered their primary home telephone number on the National Registry reported that they had experienced an 80% reduction in the volume of telemarketing solicitations since registration.

registry in place at the time enacted laws that “adopted” the National Registry as the State registry for State law purposes.¹⁷ In addition, seventeen States that operated or continue to operate do not call lists contributed their data to the National Do Not Call Registry in FY 2003 and FY 2004, with over 12.6 million telephone numbers transferred by those States.¹⁸ As of FY 2004, eight States had not shared their registries with the National Registry.¹⁹

VI. ANALYSIS OF THE PROGRESS OF COORDINATING THE OPERATION AND ENFORCEMENT OF THE NATIONAL DO NOT CALL REGISTRY WITH THE FCC

The FTC and the FCC have worked closely to coordinate their efforts to enforce the National Do Not Call Registry. In 2003, the two agencies signaled their commitment to cooperate and ensure efficient enforcement of their respective do not call rule provisions with a Memorandum of Understanding.²⁰ The staff of the agencies began preliminary discussions in FY 2003 – even before the eff ;

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Implementation of the National Do Not Call Registry

In FY 2004, based upon review of complaints in its database, the FTC filed seven cases related to the National Do Not Call Registry against the following principal defendants:

Vector Direct Marketing, LLC allegedly engaged in the unauthorized billing of consumers for purported do not call protection services and for the removal of personal information from telemarketers' files. The company also falsely claimed that, for a fee, it would perform those services.²³

Telephone Protection Agency, Inc. allegedly misrepresented that it could register consumers with the FCC's national registry when, in fact, the FCC had no such list at the time. The FTC's complaint also alleged that the defendants billed consumers without their authorization, and misrepresented to consumers that they would notify every known telephone and mailing list company not to sell or lease the consumers' information to anyone.²⁴

National Consumer Council allegedly misrepresented material facts regarding a purported debt negotiation service; initiated or caused others to initiate telephone calls to numbers on the National Registry as well as to persons who had made a company-specific request not to be called; and initiated or caused others to initiate telephone calls to consumers within a given area code without first paying the required access fee for data from the National Registry for that area code.²⁵

Internet Marketing Group and a host of other corporate and individual defendants allegedly misrepresented material facts in the sale of business ventures and violated the Commission's Franchise Rule, which requires provision of timely, complete, and accurate disclosure statements and earnings claims. In addition, the defendants were charged with initiating or causing others to initiate telephone calls to numbers on the National Do Not Call Registry.²⁶

Debt Management Foundation Services allegedly violated various provisions of the Amended TSR, including the following: making misrepresentations about their debt management services; billing without the express informed consent of customers; initiating or causing others to initiate telephone calls to numbers on the National Registry; and initiating telephone calls to consumers within a given area code without first paying the requisite

fee to access the National Registry. In addition, the defendants allegedly failed to provide required privacy disclosures and violated credit repair laws.²⁷

4086465 Canada, Inc., a corporation doing business as International Protection Center and Consumer Protection Center, allegedly misrepresented, inter alia, that for a fee they could arrange for consumers' telephone numbers to be placed on the National Registry.²⁸

Braglia Marketing Group ("BMG"), a timeshare telemarketer, allegedly initiated or caused others to initiate telephone calls to hundreds of thousands of numbers on the National Registry, abandoned calls, or caused others to abandon calls, and initiated telephone calls to consumers within a given area code without first paying the required access fee.²⁹ This was the first case in which the FTC and the Department of Justice sought civil penalties from defendants for alleged do not call violations.

VIII. CONCLUSION

As of the close of FY 2003, the National Do Not Call Registry was operational, successfully accepting consumer registrations and allowing businesses to obtain access to Registry data. Despite the short interval between publication of the amended final Rule and the roll-out of the National Registry, the system was up and running as scheduled, accommodating millions of consumer registrations and thousands of business requests for access to the data efficiently and effectively. More than 64 million telephone numbers were registered in FY 2003 and FY 2004. Data from surveys and analysis of complaints about do not call violations strongly suggest that compliance with the National Do Not Call Registry provisions of the Amended TSR is high, and that consumers are receiving fewer unwanted telemarketing calls.

ENDNOTES

1. Pub. L. No. 108-10 (2003).

2.

Not Call Registry Celebrates One-Year Anniversary, available at: www.ftc.gov/opa/2004/06/dncanny.htm. The "company name" is the name as it was reported by the consumer or taken by the complaint center. Therefore, there may be variations on what appear to be the same company name, e.g., company X may be listed as "X Co", "X Co.", and "X Company." The 130,000 company names are based on a unique company name provided by the consumer as it was input into the system; names that might appear to be related are not consolidated in the complaint database. However, during any law enforcement investigation, staff typically determines whether, in fact, such similarly identified entities are related or comprise a single entity.

10. Of these, 10,456,956 registrations were transferred by States that added their State do not call registry data to the National Registry.
11. The FY 2004 total of 64,288,175 represents the total number of unique telephone numbers that were registered at any time since inception. A telephone number that was registered in FY 2003 and again in FY 2004 is only counted once in this total. A telephone number that was registered in FY 2003 or FY 2004 but subsequently deleted or removed from the National Registry, is also counted once in this total. Of the total registrations during FY 2004, 2,176,697 were additional numbers transferred by States that added their State do not call registry data to the National Registry. In total, 12,633,653 numbers were transferred by States to the National Registry as of the end of FY 2004.
12. Telemarketers could access the National Registry as of September 1, 2003. Accordingly, the fees paid in FY 2003 reflect only one month of operation. In FY 2003, the Commission imposed an annual fee of \$25 for each area code of data requested from the National Registry, with the first five area codes of data provided at no cost, and the maximum annual fee for accessing the entire National Registry was \$7,375. See 68 Fed. Reg. 45134 (July 31, 2003) for a discussion of the number of entities that accessed the National Registry, the fees, and how the fee amounts were calculated. These FY 2003 fees were in effect for the annual period beginning on September 1, 2003 and ending on August 31, 2004. Thus, the FY 2003 fees were in effect for the last month of FY 2003 and for eleven months of FY 2004.
13. In 2004, the annual fee per area code was raised to \$40 (with the first five area codes again provided at no cost) and the maximum annual fee for accessing the entire National Registry was \$11,000. See 69 Fed. Reg. 45580 (July 30, 2004) for a discussion of the number of entities that accessed the National Registry (including the approximate number of entities

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The agencies will coordinate public statements on joint cases; and

The persons signing below and their successors shall be deemed Designated Liaison Officers for purposes of implementation of this Memorandum of Understanding.

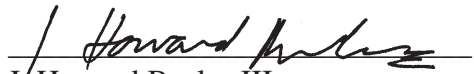
This Memorandum of Understanding, when executed or acted upon by both parties, shall continue in effect until it is modified by mutual consent of both parties or terminated by either party upon thirty (30) days advance written notice.

For the Federal Communications Commission:

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