Do-Not-Call Registry Fee Extension Act of 2007

Federal Trade Commission
Biennial Report to Congress
Reporting on Fiscal Years 2022-2023

I. Report Overview

In February of 2008, Congress passed the Do-Not-Call Registry Fee Extension Act of 2007 ("Fee Extension Act"),[1] requiring this biennial report on the National Do Not Call Registry ("Registry"). In compliance with the Fee Extension Act, this Report contains a summary of the current operations of the Registry, the impact on the Registry of telecommunication technologies, and the impact of the established business relationship exception in our enforcement efforts.

The Registry currently has over 249 million active registrations. During FY 2023, the Registry increased by more than 2.6 million phone numbers. Over 10,000 sellers, telemarketers, and exempt organizations subscribed to access the Registry in FY 2023, and nearly 2,000 of those entities paid fees totaling nearly $1.5 million.

II. Introduction

The Registry has been in operation since the summer of 2003.[2] Consumers continue to register their telephone numbers, verify registration of numbers, and submit complaints of suspected violations at a high rate. During the last 20 years, the Registry has also successfully served businesses, as they accessed the Registry, and law enforcement, as they investigated violations of the Do Not Call rules. The FTC continues to look for and make improvements to the system to better serve consumers, telemarketers, and law enforcers, while maintaining the efficient management and accuracy of the Registry.

[1] Pub. L. No. 110-188, 122 Stat. 633 (2008).

[2] See 68 Fed. Reg. 45134 (July 31, 2003).

The Fee Extension Act requires the Federal Communications Commission ("FCC") to first report to Congress by December 31, 2009, and biennially thereafter. Specifically, the Fee Extension Act requires this report provide the following information:

- the number of consumers who have placed their telephone numbers on the Registry;

- the five-year re-registration requirement;
- new telecommunication technology;
- number portability and abandoned telephone numbers; and

x the impact of the established business relationship exception on businesses and consumers.

This biennial Report provides an overview of the operation of the Registry for FY 2022 and 2023.

III. Number of Consumers Who Placed Their Telephone Numbers on the National Registry

Americans continue to utilize the Registry in very high numbers. In the first four days following the launch of the Registry on June 27, 2003, more than 10 million numbers were registered. As of September 30, 2003, a total of 51,968,777 telephone numbers had been registered. With each fiscal year, the number has steadily increased. By the end of FY 2022, the number of active registrations was 246,820,600. As of September 30, 2022, the Registry had 249,498,621 active registrations.[3]

IV. Number of Entities Paying Fees for Access to the National Registry

In FY 2022, a total of 2,116 entities paid fees totaling $14,302,172 for access to the Registry. In FY 2022, a total of 1,963 entities paid fees totaling $14,940,652 for access to the Registry.[4] In addition, certain entities can access data from the Registry without having to pay a fee. These include entities that access five or fewer area codes of data in a year, as well as exempt organizations (such as charitable organizations) that are not required to access the Registry to comply with do-not-call requirements under federal law, but voluntarily access the Registry to avoid calling consumers who do not wish to receive calls.[5] In FY 2022, 8,502 entities subscribed to access five or fewer area codes at no charge, and 567 claiming "exempt organization" status obtained free access. In FY 2023, 7,814 entities subscribed to access five or fewer area codes at no charge, and 505 entities claiming "exempt organization" status obtained free access.

V. Impact on the National Registry of the Five-Year Re-Registration Requirement, New Telecommunications Technology, and Number Portability and Abandoned Telephone Numbers

A. Five-Year Re-Registration Requirement

When the Registry was first implemented in 2003, registrations were scheduled to expire after five years. Out of concern that the expiration of numbers on the Registry would be

coordinated sweep involving more than 180 actions brought by more than 100 federal and state law enforcement partners.[10]

To help end caller ID spoofing, among other purposes, Congress passed the Pallone Thune Telephone Robocall Abuse Criminal Enforcement and Deterrence Act ("TRACED Act") at the end of 2019.[11] To combat illegal caller ID spoofing, and as directed by the TRACED Act, the FCC required that voice service providers implement the STIR/SHAKEN caller ID authentication framework in their Internet Protocol (IP) networks and take reasonable measures to implement a caller ID authentication solution for non-IP networks by June 30, 2021.[12] Consistent with the TRACED Act, the FCC extended the deadline for STIR/SHAKEN implementation for small and other eligible voice service providers until June 30, 2023; however the agency recently shortened the small voice service provider extension for those providers the FCC determined are most likely to be the source of illegal robocalls.[13] Once full implementation of STIR/SHAKEN iscomplete, it should be much more difficult for illegal callers to spoof caller ID information

out.[26] The FCC also established a safe harbor for voice service providers (including intermediate providers) to block calls from a bad actor upstream provider that fails to effectively mitigate illegal traffic after being notified of such traffic by the FCC. At the same time, the FCC took steps to reduce the risk of erroneous blocking.

In December 2020, the FCC expanded the safe harbor for blocking based on reasonable analytics to include certain network-level blocking, without consumer opt out, designed to identify calls that are highly likely to be illegal.[27] The safe harbor is available to terminating voice service providers that disclose to consumers that they are engaging in such blocking. The FCC also adopted enhanced transparency and redress requirements for voice service providers that block calls.

Beyond blocking, the FCC has established three affirmative obligations that apply to voice service providers (including intermediate providers). First, voice service providers must respond to all traceback requests from the FCC, law enforcement, or the industry traceback consortium, fully and timely. Second, voice service providers must take steps to effectively mitigate illegal traffic when notified of such traffic by the FCC. Finally, voice service providers must adopt affirmative, effective measures to prevent new and renewing customers from using the network to originate illegal calls.

The FCC authorized creation of a Reassigned Numbers Database that launched on November 1, 2021.[28] The database enables callers to determine whether numbers they wish to call have been disconnected since they obtained consumer consent, and therefore whether the consent they have to call each number remains valid.

In addition, the FCC has pushed industry to develop and deploy the STIR/SHAKEN caller ID authentication standards, a protocol to verify that the person dialing the call has authority to use the displayed caller ID number. STIR/SHAKEN are acronyms of Secure Telephony Identity Revisited (STIR) working group of the Internet Engineering Task Force, which developed several protocols for authenticating caller ID information and the Signature-based Handling of Asserted information using toKENs (SHAKEN) specification produced by the Alliance for Telecommunications Industry Solutions and the SIP Forum, which standardizes how the protocols produced by STIR are implemented across the industry.

Deployment of STIR/SHAKEN will help reduce caller ID spoofing and assist telecommunications and analytics companies in determining which calls they should block. However, it should be noted that this protocol applies exclusively to calls that are originated and delivered using Internet Protocol (IP) technology, since existing technology does not permit STIR/SHAKEN to work with calls delivered using non-IP technology, including traditional time-division multiplexing technology. The FCC required voice service providers to implement STIR/SHAKEN on their IP networks by June 30, 2021, subject to some extensions. Voice service providers that received an extension are required to perform robocall mitigation on calls they originate until they have implemented STIR/SHAKEN.

Throughout 2019, several of the larger telecommunications companies issued press releases stating that they had begun beta testing and a phased implementation of STIR/SHAKEN.[29] Although

relationship."[81] An established business relationship under the TSR and the FCC rules is a relationship based on: (1) the consumer's purchase, rental, or lease of the seller's goods or services, or a financial transaction between the consumer and seller, within the 18 months

Some businesses, seeking to circumvent the Registry, have sought to exploit the established business relationship exemption by making calls to persons who have not had the requisite contact with the seller. For example, some marketers claiming a business relationship have improperly placed telemarketing calls to consumers after acquiring the consumers' telephone numbers from others. So-called "lead generators" collect information on consumer interests through web advertising, by offering coupons or samples, or simply by "cold calling" consumers in order to determine whether the consumer has any interest in a particular product or service, such as debt relief or home alarms. Lead generators responsible for so-called "co-registered," "call verified," "permission-based," or "opt-in" leads often fail to remove numbers listed on the Registry before calling consumers. Lead-generating companies that have engaged in this type of "cold calling" have agreed to pay civil penalties to settle charges that their calls violated the TSR.[37] At the same time, some telemarketers and sellers have acquired leads from lead generators and used them in telemarketing campaigns without screening the numbers to remove those listed on the Registry. In this way, a single sales pitch can produce multiple illegal calls, generating one or more calls from both the lead generators and the telemarketer.

Telephone calls from telemarketers to phone numbers provided by lead generators generally do not fall within the established business relationship exception because, while the consumers may

ENDNOTES

1. Pub. L. No. 110-188, 122 Stat. 635 (2008), codified at 15 U.S.C. § 6154.

2. On January 29, 2003, the FTC issued the final amendments to the Telemarketing Sales Rule ("TSR") that, inter alia, established the National Do Not Call Registry. 16 C.F.R. § 310.

3. These totals exclude those telephone numbers that have been deleted by consumers or eliminated as part of the FTC's process for removing disconnected and reassigned numbers from the Registry. A telephone number that was registered more than once between FY 2003 - 2021 is counted only once in these totals.

4. As established by the Fee Extension Act, in FY 2021, the annual fee per area code was $66 (with the first five area codes provided at no cost) with the maximum annual fee for accessing the entire Registry being $18.044.

5. Such "exempt" organizations include entities that engage in outbound telephone calls to consumers that do not involve the sale of goods or services, such as calls to induce charitable contributions, to raise funds for political purposes, or to conduct surveys. They also include entities who are engaged solely in calls to persons with whom they have an established business relationship or from whom they have obtained express written agreement to call, pursuant to the Amended TSR, 16 C.F.R. § 310.4(b)(1)(iii)(B)(1) or (2), and who do not access the Registry for any other purpose.

6. See FTC Press Release, FTC Pledges Not to Drop Any Numbers From Do Not Call Registry, Pending Final Congressional or Agency Action on Whether to Make Registration Permanent (Oct. 23, 2007), available at http://www.ftc.gov/opa/2007/10/dnctestimony.shtm.

7. Pub. L. No. 110-187, 122 Stat. 633 (2008).

8. See, e.g., United States v. XCast Labs, Inc., 23-cv-03645 (C. D. Cal. filed May 12, 2023); United States v. Hello Hello Miami, LLC, 1:23-cv-22553 (S.D. Fla filed July 18, 2023). See FTC Press Release, FTC Ramps Up Fight to Close the Door on Illegal Robocalls Originating from Overseas Scammers. (April 11, 2023), available at https://www.ftc.gov/news-events/news/press-releases/2023/04/ftc-ramps-fight-close-door-illegal-robocalls-originating-overseas-scammers-imposters.

9. See FTC v. Cristiano, 8:18-cv-00936 (C.D. Cal. filed March 26, 2019) (operator of dialing platform used to place outbound robocalls); Dialing platforms and soundboard); United States v. Yodel Technologies, LLC, 8:23-cv-01575 (M.D. Fla. filed July 14, 2023) (operator of soundboard technology platform).

10. See Press Release, FTC, Law Enforcers Nationwide Announce Enforcement Sweep to Stem the Tide of Illegal Telemarketing Calls to U.S. Consumers (July 18, 2023) available at https://www.ftc.gov/news-events/news/press-releases/2023/07/ftc-law-enforcers-nationwide-announce-enforcement-sweep-stem-tide-illegal-telemarketing-calls-us.

11. Pub. L. No. 116-105, 133 Stat. 3274 (2019).

12. Call Authentication Trust Anchor Implementation of TRACED Act Section 6(A) Knowledge of Customers By Entities With Access to Numbering Resources, WC Docket Nos. 17-97, 20-67, Report and Order and Further Notice of Proposed Rulemaking, 35 FCC Rcd 3241, 3252-58, paras. 25-35 (2020).

13. Call Authentication Trust Anchor, WC Docket No. 17-97, Second Report and Order, 36 FCC Rcd 1859, paras. 40-48, 52-53, 66-70 (2020).

14. See Press Release, FTC Announces Robocall Challenge Winners, Proposals Would Use Call Filter Software to Reduce Illegal Calls (Apr. 2, 2013), available at http:/www.ftc.gov/opa/2013/04/robocall.shtm

15. See https://www.nomorobo.com/ (last visited Nov. 3, 2023).

16. See Press Release, FTC Announces Winners of "Zapping Rachel" Robocall Contest (Aug. 28, 2014), available at https://www.ftc.gov/news-events/press-releases/2014/08/ftc-announces-winners-zapping-rachel-robocall-contest

many AT&T wireless customers that blocks fraud calls and flags others as potential "spam." See http://about.att.com/story/att_call_protect.html (last visited Oct. 27, 2021). T-Mobile first offered its wireless customers two free products, "Scam ID" and "Scam Block", that flag and block unwanted calls; it now offers an integrated product, "ScamShield." See https://www.t-mobile.com/customers/scam-shield (last visited Oct. 27, 2021). Verizon offers a product called "Call Filter" to its wireless customers that also attempts to flag and block unwanted calls. See https://www.verizon.com/solutions-and-services/call-filter/ (last visited Oct. 27, 2021). In addition, a number of carriers make Nomorobo available to their VoIP or cable line customers. See, e.g., https://www.fcc.gov/consumers/guides/stop-unwanted-robocalls-and-texts (listing available call-blocking resources from a number of wireline providers) (last visited Oct. 27, 2021).

21. The Cellular Telecommunications Industry Association (CTIA) maintains a list of some of the available call blocking apps, both for iOS devices (https://www.ctia.org/consumer-resources/how-to-stop-robocalls/ios-robocall-blocking/) and for Android devices (https://www.ctia.org/consumer-resources/how-to-stop-robocalls/android-robocalls-blocking/) (last visited Oct. 27, 2021).

22. See Pairing Government Data with Private-Sector Ingenuity to Take on Unwanted Calls, available at https://strategy.data.gov/proof-points/2019/06/21/pairing-government-data-with-private-sector-ingenuity-take-on-unwanted-calls/ (last visited Oct. 27, 2021).

23. Advanced Methods to Target and Eliminate Unlawful Robocalls, Call Authentication Trust Anchor, CG Docket No. 17-59, WC Docket No. 17-97, Declaratory Ruling and Third Further Notice of Proposed Rulemaking, 34 FCC Rcd 4876, 4884-90, paras. 26-42 (2019) (Call Blocking Declaratory Ruling); Advanced Methods to Target and Eliminate Unlawful Robocalls, Alarm Industry Communications Committee Petition For Clarification Or Reconsideration, American Dental Association Petition For Clarification Or Reconsideration, CG Docket No. 17-59, Third Report and Order, Order on Reconsideration, and Fourth Further Notice of Proposed Rulemaking, 35 FCC Rcd 7614, 7625-27, paras. 25-34 (2020) (July 2020 Call Blocking Order); Advanced Methods to Target and Eliminate Unlawful Robocalls, CG Docket No. 17-59, Fourth Report and Order, 35 FCC Rcd 15221, 15234-38, paras. 39-47 (2020) (December 2020 Call Blocking Order).

24. Advanced Methods to Target and Eliminate Unlawful Robocalls, CG Docket No. 17-59, Report and Order and Further Notice of Proposed Rulemaking, 32 FCC Rcd 9706, 9710-21, paras. 10-40 (2017).

25. Call Blocking Declaratory Ruling, 34 FCC Rcd at 4884-90, paras. 26-42.

26. July 2020 Call Blocking Order, 35 FCC Rcd at 7625-27, paras. 25-34.

services offered and the identity of the affiliate." Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, CG Docket No. 02-278, Report and Order, 18 FCC Rcd 14014, 14082-83, para. 117 (2003).

37. See U.S. v. Consumer Education.info, Inc., 1:16-cv-02692 (D. Col. filed Nov. 1, 2016), available at https://www.ftc.gov/enforcement/cases-proceedings/152-3081/consumer-educationinfo-inc

38. See FTC v. Career Education Corp. et al., No. 1:19-cv-05739 (N.D. Ill. filed Aug. 27, 2019); United States v. Versatile Mktg. Sols., Inc. et al., No. 1:14-cv-10612-PBS (D. Mass. filed Mar. 10, 2014); United States v. Central Florida Investments, Inc., Civ. No. 6:09-cv-01041-PCF-GJK (M.D Fla. filed Jan. 15, 2009); United States v. Ameriquest Mortgage Company, Civ. No. 8:07-cv-01304-CJC-MLG (C.D. Cal. filed Nov. 6, 2007).

39. See United States v. Electric Mobility Corporation, No. 1:11-cv-02218-RMB-KMW (D.N.J. filed April 19, 2011); United States v. All in One Vacation Club, L.L.C., No. 6:09-cv-103-Orl-31DAB (M.D. Fla. filed Jan. 14, 2009); United States v. Craftmatic Industries, Inc., 2:07-cv-04652-LDD (E.D. Pa. filed Nov. 6, 2007).

40. 16 C.F.R. § 310.4(b)(1)(iii)(B)(1)(v)(A).

41. See United States v. Fluent, LLC., 9:23-cv-81045 (S.D. Fla. filed July 18, 2023); United States v. Viceroy Media Solutions, 3:23-cv-03516 (N.D. Cal. filed July 14, 2023).

42. https://public.tableau.com/profile/federal.trade.commission#!/vizhome/DoNotCallComplaints/Maps