

Biennial Report to Congress

Under the Do Not Call Registry
Fee Extension Act of 2007

FY 2014 and 2015



Federal Trade Commission
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Do-Not-Call Registry Fee Extension Act of 2007

Federal Trade Commission Biennial Report to Congress Reporting on Fiscal Years 2014-2015

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 new telecommunication technologies, and the impact of the established business relationship exception in our enforcement efforts.

The Registry currently has over 222 million active registrations. During FY 2015, the Registry increased by another 4.9 million phone numbers. Over 23,000 sellers, telemarketers, and exempt organizations subscribed to access the Registry, and 2,504 of those entities paid fees totaling more than \$13.3 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 steadily high rate. The FTC continues to look for and make improvements to the system to better serve both consumers and telemarketers while maintaining the efficient management and accuracy of the Registry.

The Fee Extension Act required the FTC, in consultation with the Federal Communications Commission (“FCC”), to first report to Congress on the Registry by December 31, 2009, and biennially thereafter. Specifically, the Fee Extension Act requires that the FTC’s report provide the following information:

- 1) the number of consumers who have placed their telephone number(s) on the Registry;
- 2) the number of persons paying fees for access to the Registry and the amount of such fees;
- 3) the impact on the Registry of
 - a) the five-year re-registration requirement;
 - b) new telecommunication technology;
 - c) number portability and abandoned telephone numbers; and

- 4) 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 2014 and 2015.

III. Operation of the National Registry

During the last 12 years, the Registry has successfully served consumers as they registered their numbers and submitted complaints, businesses as they accessed the Registry, and law enforcement as they investigated Registry violations. FTC staff continues to work closely with the contractor overseeing the Registry to ensure that the integrity of the Registry is maintained and that consumers' preferences not to receive telemarketing calls are honored.

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

Americans continue to enthusiastically embrace the Registry. 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 2014, the number of active registrations was 217,855,659. As of September 30, 2015, the Registry had 222,841,484 active registrations.³

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

In FY 2014, a total of 2,582 entities paid fees totaling \$13,518,274 for access to the Registry. In FY 2015, a total of 2,504 entities paid fees totaling \$13,325,318 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 2014, 23,049 entities subscribed to access five or fewer area codes at no charge, and 585 entities claiming "exempt organization" status obtained free access. In FY 2015, 20,075 entities subscribed to access five or fewer area codes at no charge, and 521 entities claiming "exempt organization" status obtained free access.

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

In accordance with the Fee Extension Act, the following sections of this Report outline the impact on the Registry of the five-year re-registration requirement, new telecommunications technology, and number portability and abandoned telephone numbers.

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 detrimental to consumers, the FTC, in the fall of 2007, pledged not to drop any numbers from the Registry, pending final Congressional action.⁶ The following February, Congress passed the Do Not Call Improvement Act of 2007 (“DNCIA”), eliminating the automatic removal of numbers from the Registry.⁷

The FTC continues to believe that eliminating the re-registration requirement has not decreased the accuracy of the Registry, but that it has enabled consumers to maintain their right to privacy without interruption and made it possible to avoid the cost associated with educating consumers about the need to re-register. At the time the DNCIA was passed in February 2008, no registrations had yet expired, because the first registrations were made in late June 2003, less than five years earlier. Consequently, no consumers ever had to re-register their numbers.

New Telecommunications Technology

The FTC also continues to track how technology affects the Registry and the consumers and telemarketers who access it. A variety of new technologies has increased the number of illegal telemarketing calls made to telephone numbers on the Registry. For example, Voice Over Internet Protocol (VoIP) technology allows callers, including law-breakers, to make higher volumes of calls inexpensively from anywhere in the world. New technologies also allow illegal telemarketers to fake the caller ID information that accompanies their calls, which allows them to conceal their identity from consumers and law enforcement. Further, many telemarketers use automated dialing technology to make calls that deliver prerecorded messages (commonly referred to as “robocalls”), which allow violators to make very high volumes of illegal calls without significant expense. The net effect of these new technologies is that individuals and companies who do not care about complying with the Registry or other telemarketing laws are able to make more illegal telemarketing calls cheaply and in a manner that makes it difficult for the FTC and other law enforcement agencies to find them. As a result, consumer complaints about illegal calls – especially robocalls – have increased significantly over the last six years. In the fourth quarter of 2009, the FTC received approximately 63,000 complaints about illegal robocalls each month. That number has nearly tripled – in FY 2015, the FTC received an average of more than 175,000 robocall complaints per month.

To combat the new technologies that are being used to make illegal calls, FTC staff has undertaken a number of initiatives designed to spur the development and availability of technology that will protect consumers from illegal calls. For example, in 2012, the Commission hosted a public summit on robocalls to discuss the robocall problem and explore potential technological solutions. FTC staff have also worked closely with industry groups, academic experts, and counterparts at federal, state, and international government bodies to encourage the development of new technologies and telecommunications standards to combat illegal calls.

In addition, in the past three years the FTC has held four public contests designed to spur private sector development of technological solutions that will stop illegal telemarketing calls. The FTC held its first public contest in conjunction with its 2012 Robocall Summit, offering a \$50,000 prize to the individual or small team who proposed the best technological solution that blocks robocalls on consumers' landlines and mobile phones. After reviewing 798 submissions, the FTC announced three winning solutions on April 2, 2013.⁸ Six months later, one of the solutions, Nomorobo, was made available to consumers, and it now reports having over 170,000 subscribers⁹ and has blocked over 50 million robocalls.¹⁰ Following on the success of the first challenge, the FTC conducted its second contest, "Zapping Rachel," in August 2014, where it awarded \$17,000 in prizes to five winners who developed solutions that improved telephone honeypots – a system of phone lines that collect information and data about illegal calling patterns.¹¹ In 2015, the FTC conducted two more contests: "DetectaRobo" and "Robocalls: Humanity Strikes Back." "DetectaRobo" was held in conjunction with the 2015 National Day of Civic Hacking on June 6-7, 2015, and asked contestants to create predictive algorithms that can identify robocalls.¹² "Robocalls: Humanity Strikes Back" was held on August 5-9, 2015, and challenged contestants to build solutions that not only block robocalls from reaching consumers, but enable consumers to forward those unwanted robocalls to a crowd-sourced honeypot so that law enforcement and industry stakeholders can use the data collected.¹³ Winners for the 2015 contests were announced on August 17, 2015.¹⁴ FTC staff will continue its efforts to spur technological advancements that will protect consumers from unwanted calls. As the winning contestants and others further develop their ideas for introduction into the marketplace, we expect positive results for American consumers.

Number Portability and Abandoned Telephone Numbers

According to FCC regulations, people changing service providers in the same geographic area are able to retain their phone number.¹⁵ As the FTC developed procedures that its contractor uses to identify numbers to remove from the Registry, the FTC had to consider the need to identify these ported numbers and differentiate them from abandoned or disconnected numbers. To increase the likelihood that ported numbers are not removed but abandoned numbers are, the contractor first identifies the numbers in the compiled disconnection and reassignment data that have been designated as new connections. A number is designated as disconnected and reassigned for purposes of removing it from the Registry only if neither the name nor the address for the new account match the name or address associated with the previous account for that number.

Consequently, the only numbers removed from the Registry are those that have been disconnected (or abandoned) and then reconnected to a different account holder at a different address. This process, which is performed monthly, ensures that numbers that have been ported are not removed, but numbers that truly have been abandoned are deleted.

VII. Impact of Established Business Relationship Exception on Consumers and Businesses

The TSR and the FCC's rules contain exemptions that permit a seller or telemarketer to call a person who has listed his or her telephone numbers on the Registry if the call is to a person with whom the seller has an "established business relationship."¹⁶ An established business relationship under the TSR and the FCC rules is a relationship based on (i) 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 immediately preceding the date of a telemarketing call; or (ii) a consumer's inquiry or application regarding a product or service offered by the seller within the three months immediately preceding the date of a telemarketing call.¹⁷ This exception allows sellers and their telemarketers to call customers who have recently made purchases or made payments, and to return calls to prospective customers who have made inquiries, even if their telephone numbers are on the Registry. On November 18, 2015, the Commission amended the TSR to make clear that sellers and telemarketers have the burden of proof to demonstrate the existence of an established business relationship.¹⁸

Many businesses rely on this exemption to conduct telemarketing campaigns directed at recent or long-time customers, or consumers who have expressed an interest in becoming customers. Many consumers, however, perceive telemarketing calls that fall within this exemption to be inconsistent with the Registry because the consumers are unaware of the exception or are not aware that they have a relationship with the seller that falls within the definition of an established business relationship.

Such perceptions by consumers are especially likely when the relationship between the consumer and the seller arises from a brief, one-time transaction, or when the seller identified in the telemarketing call and the seller with whom the consumer has a relationship are part of the same legal entity, but are perceived by consumers to be different because they use different names or are marketing different products. Both the FTC and the FCC have stated that the issue of whether calls by or on behalf of sellers who are affiliates and subsidiaries of an entity with which a consumer has an established business relationship fall within the exception depends on consumer expectations. The FTC characterizes the issue as follows: "would consumers likely be surprised by that call and find it inconsistent with having placed their telephone number on the national 'do-not-call' registry?"¹⁹

For both the FTC and the FCC, the factors to be considered in this analysis include whether the subsidiary's or affiliate's goods or services are similar to the seller's, and whether the subsidiary's or affiliate's name is identical or similar to the seller's name. The greater the similarity between the nature and type of goods or services sold by the seller and any subsidiary

or affiliate and the greater the similarity in identity between the seller and any subsidiary or affiliate, the more likely it is that the call will fall within the established business relationship exemption.²⁰

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 these so called "call verified," "permission-based," or "opt-in" leads" often fail to remove numbers listed on the Registry before calling consumers. At the same time, some telemarketers and sellers have acquired leads from lead generators and used them in telemarketing campaigns without screening the numbers called to remove numbers 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* have a relationship with the lead generator, they do not have an established business relationship with the seller who has purchased the leads. Unless the consumer inquired into the services of a specified seller, or the lead generator made disclosures that would alert the consumer that he or she should expect telemarketing calls from the seller as a result of his or her communications with the lead generator, the seller cannot claim that it has a relationship with the consumer such that it can ignore the consumer's request not to receive telemarketing calls. In several enforcement actions, businesses that made telephone calls to consumers on the Registry after acquiring the consumers' names from a lead generator agreed to pay civil penalties to settle charges that their calls violated the TSR.²¹

Other businesses have sought to circumvent the Registry by utilizing sweepstakes entry forms as a way to exploit the established business relationship exemption, arguing that the submission of a sweepstakes entry form creates an established business relationship for purposes of the TSR. The TSR, however, does not permit companies to circumvent the Registry in this manner because a sweepstakes entry form does not create an established business relationship for purposes of the TSR. Companies have agreed to pay civil penalties for making illegal calls that relied upon sweepstakes entry forms as a basis for making telemarketing calls.²²

VIII. Conclusion

The Registry exists to provide consumers a choice whether to receive telemarketing calls. It is important that the FTC work to keep it accessible and effective for consumers and telemarketers. As new technology provides new challenges, we actively seek to address and

confront these challenges. This includes encouraging private industry, other government entities, academia, and other interested parties to work towards solutions and create new strategies.

We publish an Annual DNC Databook that gives a substantial amount of detail regarding registration numbers and other statistical information regarding the Registry. The 2015 Databook can be found at www.ftc.gov/reports/national-do-not-call-registry-data-book-fiscal-year-2015. FTC staff continues to work closely with the contractor overseeing the Registry to ensure that the integrity of the Registry is maintained and that consumers' preferences not to receive telemarketing calls are honored.

ENDNOTES

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1. Pub. L. No. 110-188, 122 Stat. 635 (2008).
 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 removal process. A telephone number that was registered more than once between FY 2003 - FY 2015 is counted only once in these totals.
 4. As established by the Fee Extension Act, in FY 2015, the annual fee per area code was \$60 (with the first five area codes provided at no cost) with the maximum annual fee for accessing the entire Registry being \$16,482.
 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)(i) or (ii), and who do not access the Registry for any other purpose.
 6. See FTC Press Release at <http://www.ftc.gov/opa/2007/10/dnctestimony.shtm>.
 7. Pub. L. No. 110-187, 122 Stat. 633 (2008).
 8. 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>.

9. See Alina Tugend, *A Year Fighting Robocalls, and Finding the Right Parts*, N.Y. Times, Dec. 26, 2014, available at http://www.nytimes.com/2014/12/27/your-money/a-year-of-shortcuts-the-fight-against-robocalls-gains-ground.html?_r=0.

10. See Nomorobo Home Page, <https://www.nomorobo.com/> (last visited December 17, 2015).

11. 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>.

12. See Fed. Trade Comm’n, DetectaRobo, <https://www.ftc.gov/detectarobo> (last visited June 2, 2015); Press Release, FTC Announces New Robocall Contests to Combat Illegal Automated Calls (Mar. 4, 2015), available at <https://www.ftc.gov/news-events/press-releases/2015/03/ftc-announces-new-robocall-contests-combat-illegal-automated>.

13. See Fed. Trade Comm’n, Robocalls: Humanity Strikes Back, <https://www.ftc.gov/strikeback> (last visited June 2, 2015); Press Release, FTC Announces New Robocall Contests to Combat Illegal Automated Calls (Mar. 4, 2015), available at <https://www.ftc.gov/news-events/press-releases/2015/03/ftc-announces-new-robocall-contests-combat-illegal-automated>.

14. Press Release, FTC Awards \$25,000 Top Cash Price for Contest-Winning Mobile App tThat Blocks Illegal Robocalls (Aug., 17, 2015), available at <https://www.ftc.gov/news-events/press-releases/2015/08/ftc-awards-25000-top-cash-prize-contest-winning-mobile-app-blocks>.

15. 47 C.F.R. § 52.23.

16. 16 C.F.R. § 310.4(b)(1)(iii)(B)(ii) and § 310.2(o). The FCC’s rules similarly include an exemption for live-voice calls to consumers with whom the seller has an established business relationship. See 47 C.F.R. § 64.1200(c)(2), (f)(5), and (f)(14)(ii). These exemptions do not apply if the person has asked to be on the seller’s “entity-specific” do-not-call list by telling the seller or its representatives that he or she does not wish to receive telemarketing calls from the seller. See *id.* § 64.1200(f)(5)(i). The FCC eliminated the established business relationship exemption that applied to prerecorded telemarketing calls to residential lines, effective October 16, 2013. See *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02-278, Report and Order, 27 FCC Rcd 1830, 1845-47, paras. 35-43 (2012).

17. See *United States v. Columbia House Co.*, Civ. No. 05C-4064 (N.D. Ill. filed July 14, 2005). In this case, the company agreed to a settlement after the FTC’s analysis found that its

telemarketers continued to call former customers after the 18-month period provided by the established business relationship exemption had expired.

18. See Telemarketing Sales Rule (Nov. 18, 2015), at 120-121, 133-34, https://www.ftc.gov/system/files/documents/federal_register_notices/2015/11/151118tsr_frn.pdf (to be codified at 16 C.F.R. § 310.4).

19. 68 Fed. Reg. at 4594. See also 47 C.F.R. § 64.1200(f)(5)(ii) (under the FCC's rules, a consumer's "established business relationship with a particular business entity does not extend to affiliated entities unless the [consumer] would reasonably expect them to be included").

20. See Complying with the Telemarketing Sales Rule, at <http://www.ftc.gov/bcp/edu/pubs/business/marketing/bus27.shtm>. Similarly, the FCC has stated that "affiliates fall within the established business relationship exemption only if the consumer would reasonably expect them to be included given the nature and type of goods or 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).

21. See *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-00104-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).

22. See *United States v. Electric Mobility Corporation*, No. 1:11-cv-2218-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).



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