

Privacy Rights Clearinghouse

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April 11, 2002

Secretary
Federal Trade Commission
CRC-240, Room 159
600 Pennsylvania Ave, N. W.
Washington, D.C. 20580

RE: Telemarketing Rulemaking – Comment, FTC File No. R411001

The Privacy Rights Clearinghouse (PRC) is a nonprofit consumer education and advocacy organization based in San Diego, California. For over ten years the PRC has been educating consumers about ways to understand the evolving world of personal privacy and technology. Each individual's right to control how personal information is collected and used is at the core of all the PRC's endeavors.

The PRC interacts directly with the public via a hotline and responses to e-mail inquiries. Consumer education is also provided through publication of a number of Fact Sheets, available both on the PRC's web site and by mail for those who do not have access to the internet.

The PRC is pleased to join the Electronic Privacy Information Center (EPIC), the Center for Democracy & Technology (CDT) and others in support of the Federal Trade Commission's national "Do-Not-Call" list. The PRC wholeheartedly endorses the findings and conclusions of the joint comments submitted by EPIC and CDT.

We also join in praise for the Commission's efforts in taking a significant step toward allowing individuals the right to privacy in their homes. We offer the follow specific comments for the Commission's consideration.

General Comments on Public Reaction to Telemarketing

As a general guide in considering the adoption of final rules, the Commission should always bear in mind that any company that markets products and services through unsolicited telephone calls to individuals at home has made a unilateral choice to do business in this manner. Thus, if, when adopting these rules, the Commission believes it necessary to weigh the interests of telemarketers against those of individuals, we urge the Commission to consider that individuals have in the past had no choice in this type of marketing technique.

Complaints about unwanted telemarketing calls are among the top ten reasons the public contacts the PRC. The public's annoyance with telemarketing calls is also a frequent topic of requests for interviews directed to the PRC from media sources. The PRC's experience as well as that of other consumer organizations shows that telemarketing is a major public concern and that, to

date, many representatives of this industry have largely ignored government efforts at curtailing deceptive marketing practices and privacy invasions.

The Commission's proposal for a national "do-not-call" registry is an important step in allowing individuals more control over intrusions of privacy in the home, among many other benefits. The amount lost by consumers to deceptive telemarketing sales practices each year is well documented. Stricter standards are necessary to regulate an industry so closely associated with fraudulent practices. Industry self-regulation and weaker government oversight have been shown to be ineffective.

"Do not call" Registry

Enrollment in the national "do-not-call" registry should be as convenient and easy as possible. A call to a toll-free number or the ability to register online would be the easiest form of registration. Either of these choices would be preferable to a mail-in registration that could lend itself to the creation of a database containing personal information such as name and address. For that reason, the PRC believes the objective of privacy can be best accomplished if the register captures no more than the minimum amount of information necessary to carry out the purpose of the register, that is area code and telephone number.

Individuals should, at their election, be able to accept telemarketing calls from specific companies. However, the burden of proving that one has given informed consent for excepted calls should be upon the telemarketer and not the FTC or the individual. Inclusion of exceptions would seem an unnecessary complication to the registry. Placing the burden of proving consent on the telemarketer would mean that consent would only become an issue upon a complaint of unauthorized calls.

For a telemarketer to be granted the right to contact an individual in the privacy of his or her home, a standardized, separate form, signed and dated, should be obtained by the company seeking an exception to the rule. Maintaining proof of consent to call should be a record keeping requirement for the telemarketer. In no instance should informed consent to telemarketing calls be inferred from a consumer's having signed a waiver incorporated into other documents such as a "market survey."

Registration of Multiple Telephone Numbers

Generally, an individual should be able to call a toll free telephone number or visit a web site to place his or her telephone number on the do not call registry. Registration would be simple when the toll free number captures the number from which the call was made. However, there are a few instances where it would be reasonable for a consumer to be able to make one call to the toll free number or one visit to the web site and register more than one telephone number.

For example, one telephone call or one visit to a web site should be sufficient to register a home telephone number as well as a cell phone number. As another example, if an adult is monitoring the affairs of an elderly relative who lives outside the near vicinity, a single call to a toll free number or a single visit to a web site should be able to register the telephone number of the person making the call as well as the elderly relative. One way might be to have the toll free number or web site allow an option of registering up to three or four telephone numbers with one call or visit to a web site. But, the toll free number should put a limit on how many numbers can be captured with one call.

Telemarketer Identification

The FTC should adopt strict standards to prohibit any company making telemarketing solicitations from employing any device or scheme to mask the origin of the call. Furthermore, the FTC should require telemarketers to take affirmative steps, e.g. required training and monitoring of sales calls, to assure that its sales force make clear disclosures to consumers on initial contact. This would include, among other things: the name of the company; the name of the salesperson, the reason for the call, and the listed phone number of the company's customer service department.

Abandoned Calls

The Commission is correct in its assessment of abandoned calls as one of the most invasive practices of the telemarketing industry. The Commission should not concede, however, to arguments from the telemarketing industry that reducing the call abandonment rate is not cost effective. Again, marketing by telephone is a business decision. For the many reasons cited by the Commission in its proposed regulations, the public should have to tolerate no less than a zero abandonment call rate.

A rate of less than zero means only that individuals suffer not only privacy invasion but assume a portion of costs for a business practices to which almost all consumers object. Furthermore, as EPIC pointed out, the public is already bearing considerable costs for technology designed to eliminate unwanted telemarketing calls. Companies that cannot absorb a zero abandonment call rate as a cost of doing business should be prohibited from using automatic dialing systems at all.

Furthermore, abandoned calls, along with recorded messages left on telephones, unwanted e-mail messages, and faxes amount to unauthorized use of electronic equipment owned by the consumer. For the small business owner who works from home, such intrusions not only take time away from the business, but actually cost small businesses in the loss of use of equipment.

All Telemarketers Should be Subject to the FTC Rule

The FTC should find ways to make all commercial entities that telemarket subject to the telemarketing rules. As the Commission is well aware, telemarketing as a business practice transcends the boundaries of regulated and unregulated industries. So called "cold calling" is a common marketing technique, utilized by the most established regulated entity down to the fraudulent "boiler room" that is here today and gone tomorrow.

Each type of entity -- and all those in between that make unwanted telephone calls to a private home -- contribute to privacy invasions, costs for devices to stop the invasions and the overall annoyance factor voiced so strongly by the public. For this reason, telemarketing abuses can only be curtailed if the practice itself -- rather than the type of business involved -- is subject to the Commission's rules.

In short, the public interest in curtailing unwanted telemarketing calls would best be served if all companies that use telemarketing as a sales or solicitation technique be subject to the same set of standards. As the agency with expertise in telemarketing and the one that sets the standards for telemarketing sales, it is the FTC that should have enforcement authority for any company that

does business in this manner, despite the oversight of the company's core business by any other agency.

Relationship to State Do Not Call Registers

Some states have adopted do not call laws. Many others have not. Furthermore, provisions of state laws vary from state to state. The FTC's adoption of the national registry should not be seen as a substitute for state registries. Consumers should have the right to protections of state as well as federal law when it comes to preventing unwanted telemarketing calls. In addition, strong enforcement on the state as well as the federal level can only lead to a decrease in financial losses, annoyance and loss of privacy experienced by consumers.

Again, the PRC appreciates the opportunity to offer comments, both separately and in conjunction with EPIC and CDT. We are encouraged that the FTC's national do not call register will ease the unnecessary invasions of consumers' right to peace and privacy at home.

Sincerely,

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Privacy Rights Clearinghouse