

Background

Has your evening quiet time or dinner been interrupted by a call from a telemarketer? If so, you're not alone. Congress first passed the Telephone Consumer Protection Act (TCPA) in 1991 in response to consumer concerns about the growing number of unsolicited telephone marketing calls to their homes and the increasing use of automated and prerecorded messages. In response, the Federal Communications Commission (FCC) adopted rules that require anyone making a telephone solicitation call to your home to provide his or her name, the name of the person or entity on whose behalf the call is being made, and a telephone number or address at which that person or entity can be contacted. The original rules also prohibit telephone solicitation calls to your home before 8 am or after 9 pm, and require telemarketers to comply with any do-not-call request you make directly to the caller during a solicitation call. In June 2003, the FCC supplemented its original rules implementing the TCPA and established, together with the Federal Trade Commission (FTC), the national Do-Not-Call list.

The National Do-Not-Call List

Once you have placed your home phone number or numbers, including any personal wireless phone numbers, on the national Do-Not-Call list, callers are prohibited from making telephone solicitations to those number(s). Your number or numbers will remain on the list until you remove them or discontinue service – there is no need to re-register numbers.

The national Do-Not-Call list protects home voice or personal wireless phone numbers only. While you may be able to register a business number, your registration will not make telephone solicitations to that number unlawful. Similarly, registering either a home or business fax number will not make sending a fax advertisement to that number unlawful, but the FCC has separate rules that prohibit unsolicited fax advertisements under most circumstances. For more information on the rules for fax advertisements, see our consumer fact sheet at www.fcc.gov/cgb/consumerfacts/unwanted_faxes.html, or visit our Web site at www.fcc.gov/cgb/policy/faxadvertising.html.

A telephone solicitation is a telephone call that acts as an advertisement. The term does not include calls or messages placed with your express prior permission, by or on behalf of a tax-exempt non-profit organization, or from a person or organization with which you have an established business relationship (EBR).

The National Do-Not-Call List (cont'd.)

An EBR exists if you have made an inquiry, application, purchase, or transaction regarding products or services offered by the person or entity involved. Generally, you may put an end to that relationship by telling the person or entity not to place any more solicitation calls to your home. Additionally, the EBR is only in effect for 18 months after your last business transaction or three months after your last inquiry or application. After these time periods, calls placed to your home phone number or numbers by that person or entity are considered telephone solicitations subject to the do-not-call rules.

While registering home phone numbers on the national Do-Not-Call list prohibits telephone solicitations, this action does not make prank or harassing calls unlawful. For problems with such calls, contact local law enforcement agencies.

You can register your home phone number or numbers on the national Do-Not-Call list by phone or by Internet at no cost. To add a phone number to the national Do-Not-Call list via the Internet, go to www.donotcall.gov. To register by phone, call 1-888-382-1222 (voice) or 1-866-290-4236 (TTY). You must call from the phone number you wish to register. For more information on the national Do-Not-Call list, visit our Web site at www.fcc.gov/cgb/donotcall.

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Company-Specific Do-Not-Call Lists

Whether or not your home phone number or numbers are registered on the national Do-Not-Call list, the FCC requires a person or entity placing voice telephone solicitations to your home to maintain a record of your direct request to that caller not to receive future telephone solicitations from that person or entity. The calling company must honor your do-not-call request for five years. To prevent calls after five years, you will need to repeat your request to the company, and it must honor it for another five years (and so on). Your request should also stop calls from affiliated entities if you would reasonably expect them to be included, given the identification of the caller and the product being advertised. Unless your home phone number or numbers are registered on the national Do-Not-Call list, however, you must make a separate do-not-call request to each telemarketer from whom you do not wish to receive calls.

When you receive telephone solicitation calls, clearly state that you want to be added to the caller's do-not-call list. You may want to keep a list of those persons or businesses that you have asked not to call you. Tax-exempt non-profit organizations are not required to keep do-not-call lists.

State Do-Not-Call Lists

Additionally, many states now have statewide do-not-call lists for residents in their respective states. Contact your state's public service commission or consumer protection office to see if your state has such a list, and to find out how to register your number or numbers. For contact information for your state public service commission, go to www.naruc.org/commissions.cfm. You can also find contact information for these offices in the blue pages or government section of your local telephone directory.

Automatic Telephone Dialing Systems and Artificial or Prerecorded Voice Calls

The FCC has specific rules for automatic telephone dialing systems, also known as "autodialers." These devices can be

Automatic Telephone Dialing Systems and Artificial or Prerecorded Voice Calls (cont'd.)

particularly annoying and generate many consumer complaints. The rules regarding automatically dialed and prerecorded calls apply whether or not you have registered your home phone number(s) on the national Do-Not-Call list.

Autodialers can produce, store, and dial telephone numbers using a random or sequential number generator. They often place artificial (computerized) or prerecorded voice calls. The use of autodialers, including predictive dialers, often results in abandoned calls – hang-ups or "dead air." Except for emergency calls or calls made with the prior express consent of the person being called, autodialers and any artificial or prerecorded voice messages may not be used to contact numbers assigned to:

- any emergency telephone line;
- the telephone line of any guest or patient room at a hospital, health care facility, home for the elderly, or similar establishment;
- a paging service, wireless phone service (including both voice calls and text messages), or other commercial mobile radio service; or
- any other service for which the person being called would be charged for the call.

Calls using artificial or prerecorded voice messages – including those that do not use autodialers – may not be made to home phone numbers except for:

- emergency calls needed to ensure the consumer's health and safety;
- calls for which you have given prior express consent;
- non-commercial calls;
- calls that don't include or introduce any unsolicited advertisements or constitute telephone solicitations;

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Automatic Telephone Dialing Systems and Artificial or Prerecorded Voice Calls (cont'd.)

- calls by, or on behalf of, tax-exempt non-profit organizations; or
- calls from entities with which you have an EBR.

In addition, the FCC's rules prohibit the use of autodialers in a way that ties up two or more lines of a multi-line business at the same time. All artificial or prerecorded telephone messages must state, at the beginning, the identity of the business, individual, or other entity that is responsible for initiating the call. If a business is responsible for initiating the call, the name under which the entity is registered to conduct business with the State Corporation Commission (or comparable regulatory authority) must be stated. During or after the message, the caller must give the telephone number (other than that of the autodialer or prerecorded message player that placed the call) of the business, other entity, or individual that made the call so that you can call during regular business hours to ask that the company no longer call you. The number provided may not be a 900 number or any other number for which charges exceed local or long distance charges.

Autodialers that deliver a recorded message must release the called party's telephone line within five seconds of the time that the calling system receives notification that the called party's line has hung up. In some areas, you could experience a delay before you can get a dial tone again. Your local telephone company can tell you if there is a delay in your area.

Telemarketers must ensure that predictive dialers abandon no more than three percent of all calls placed and answered by a person. A call will be considered "abandoned" if it is not transferred to a live sales agent within two seconds of the recipient's greeting.

Caller Identification (ID)

If you have caller ID, a telemarketer is required to transmit or display its phone number and, if available, its name or the name and phone number of the company for which it is selling products. The display must include a phone number that you can call during regular business hours to ask that the company no longer call you. This rule applies even if you have an EBR with the company, and even if you have not registered your home phone number(s) on the national Do-Not-Call list. Before these rules took effect, the words "private," "out of area," or "unavailable" might have appeared on the Caller ID display.

What You Can Do

The FCC can issue warning citations and impose fines against companies violating or suspected of violating the do-not-call rules, but does not award individual damages. If you receive a telephone solicitation that you think violates any of these rules, you can file a complaint with the FCC. There is no charge for filing a complaint. You can file your complaint using an on-line complaint form found at esupport.fcc.gov/complaints.htm. You can also file your complaint with the FCC's Consumer Center by e-mailing fccinfo@fcc.gov; calling 1-888-CALL-FCC (1-888-225-5322) voice or 1-888-TELL-FCC (1-888-835-5322) TTY; faxing 1-866-418-0232; or writing to:

Federal Communications Commission
Consumer & Governmental Affairs Bureau
Consumer Inquiries & Complaints Division
445 12th Street, SW
Washington, DC 20554.

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What to Include in Your Complaint

The best way to provide all the information the FCC needs to process your complaint is to complete fully the on-line complaint form. When you open the on-line complaint form, you will be asked a series of questions that will take you to the particular section of the form you need to complete. If you do not use the on-line complaint form, your complaint, at a minimum, should indicate:

- your name, address, e-mail address, and phone number where you can be reached;
- the phone number where you received the call, and whether this number is on the national Do-Not-Call list;
- the date and time of the call;
- whether the call advertised or sold any property, goods, or services;
- any information (including a caller ID number) to help identify the individual or company whose property, goods, or services were being advertised or sold, and whether any of this information was provided during the call;
- whether you or anyone else in your household gave the caller permission to call;
- whether you have an EBR with the caller (specifically, whether you or anyone else in your household made any purchases of property, goods, or services from the individual or company that called, or made any inquiry or filed an application with the individual or company prior to receiving the call); and
- whether you or anyone in your household previously asked the caller or individual or company whose property, goods, or services are being advertised or sold **NOT** to call, and when you made the request.

Some states permit you to file law suits in state court against persons or entities violating the do-not-call rules. You may be awarded \$500 in damages or actual monetary loss, whichever is greater. The amount may be tripled if you are able to show that the caller violated the rules willfully and knowingly. Filing a complaint with the FCC does not prevent you from also bringing a suit in state court.

States also can bring a civil law suit against any person or entity that engages in a pattern or practice of violating the TCPA or FCC rules. You can contact your state Attorney General's office or consumer protection agency with particular complaints, or to encourage such suits.

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For this or any other consumer publication in an accessible format (electronic ASCII text, Braille, large print, or audio), please write or call us at the address or phone number below, or send an e-mail to FCC504@fcc.gov.

To receive information on this and other FCC consumer topics through the Commission's electronic subscriber service, visit www.fcc.gov/cgb/contacts/.

This document is for consumer education purposes only and is not intended to affect any proceedings or cases involving this subject matter or related issues.

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