

FEDERAL COMMUNICATIONS COMMISSION**47 CFR Parts 64 and 68****[CG Docket No. 02–278, FCC 03–153]****Rules and Regulations Implementing the Telephone Consumer Protection Act (TCPA) of 1991****AGENCY:** Federal Communications Commission.**ACTION:** Final rule.

SUMMARY: In this document, we revise the current Telephone Consumer Protection Act of 1991 (TCPA) rules, and adopt new rules to provide consumers with several options for avoiding unwanted telephone solicitations. These new rules establish a national do-not-call registry, set a maximum rate on the number of abandoned calls, require telemarketers to transmit caller ID information, and modify the Commission's unsolicited facsimile advertising requirements.

DATES: Effective August 25, 2003, except for § 64.1200(c)(2), which contains the national do-not-call rules, and will become effective on October 1, 2003; § 64.1200(a)(5) and (a)(6), which contain the call abandonment rules, and will become effective on October 1, 2003; § 64.1601(e), which contains the caller ID rules, and will become effective on January 29, 2004; and §§ 64.1200(a)(3)(i), (d)(1), (d)(3), (d)(6), (f)(3), and (g)(1), which contain information collection requirements under the Paperwork Reduction Act (PRA) that have not been approved by the Office of Management and Budget. The Commission will publish a document in the **Federal Register** announcing the effective date for these sections. Written comments by the public on the new and modified information collections are due September 23, 2003.

ADDRESSES: In addition to filing comments with the Office of the Secretary, a copy of comments on the information collection(s) contained herein should be submitted to Leslie Smith, Federal Communications Commission, Room 1–A804, 445 12th Street SW., Washington, DC 20554, or via the Internet to Leslie.Smith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: Erica H. McMahon or Richard D. Smith at 202–418–2512, Consumer & Governmental Affairs Bureau. For additional information concerning the information collection(s) contained in this document, contact Les Smith at 202–418–0217 or via the Internet at Leslie.Smith@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order (Order) in CG Docket No. 02–278, FCC 03–153, adopted on June 26, 2003 and released July 3, 2003. The full text of this document is available at the Commission's Web site (<http://www.fcc.gov>) on the Electronic Comment Filing System and for public inspection and copying during regular business hours in the FCC Reference Center, Room CY–A257, 445 12th Street, SW., Washington, DC 20554. The complete text may be purchased from the Commission's copy contractor, Qualex International, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at (202) 418–0531 (voice) or (202) 418–7365 (tty).

Paperwork Reduction Act: The Report and Order contains either new and/or modified information collections. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public to comment on the information collection(s) contained in this Report and Order as required by the PRA. Public and agency comments are due September 23, 2003.

Synopsis

1. We revise the TCPA rules and adopt new rules to provide consumers with several options for avoiding unwanted telephone solicitations. Specifically, we establish with the Federal Trade Commission (FTC) a national do-not-call registry for consumers who wish to avoid unwanted telemarketing calls. The national do-not-call registry will supplement the current company-specific do-not-call rules for those consumers who wish to continue requesting that particular companies not call them. To address the more prevalent use of predictive dialers, we have determined that a telemarketer may abandon no more than three percent of calls answered by a person and must deliver a prerecorded identification message when abandoning a call. The new rules will also require all companies conducting telemarketing to transmit caller identification (caller ID) information, when available, and prohibit them from blocking such information. The Commission has revised its earlier determination that an established business relationship constitutes express invitation or permission to receive an unsolicited fax, and we have clarified when fax broadcasters are

liable for the transmission of unlawful facsimile advertisements.

National Do-Not-Call List

2. *Section 227.* The TCPA requires the Commission to protect residential telephone subscribers' privacy rights to avoid receiving telephone solicitations to which they object. In so doing, 47 U.S.C. 227(c)(1) directs the Commission to "compare and evaluate alternative methods and procedures" including the use of electronic databases and other alternatives in protecting such privacy rights. Pursuant to 47 U.S.C. 227(c)(3), the Commission "may require the establishment and operation of a single national database to compile a list of telephone numbers of residential subscribers who object to receiving telephone solicitations, and to make that compiled list and parts thereof available for purchase." If the Commission determines that adoption of a national database is warranted, 47 U.S.C. 227(c)(3) enumerates a number of specific statutory requirements that must be satisfied. Additionally, 47 U.S.C. 227(c)(4) requires the Commission to consider the different needs of telemarketers operating on a local or regional basis and small businesses. In addition to our general authority over interstate communications, section 2(b) of the Communications Act specifically provides the Commission with the authority to apply section 227 to intrastate communications.

3. We conclude that the record compiled in this proceeding supports the establishment of a single national database of telephone numbers of residential subscribers who object to receiving telephone solicitations. Consistent with the mandate of Congress in the Do-Not-Call Implementation Act (Do-Not-Call Act), the national do-not-call rules that we establish in this order "maximize consistency" with those of the FTC. The record clearly demonstrates widespread consumer dissatisfaction with the effectiveness of the current rules and network technologies available to protect consumers from unwanted telephone solicitations. Indeed, many consumers believe that with the advent of such technologies as predictive dialers that the vices of telemarketing have become inherent, while its virtues remain accidental. We have compared and evaluated alternative methods to a national do-not-call list for protecting consumer privacy rights and conclude that these alternatives are costly and/or ineffective for both telemarketers and consumers. See 47 U.S.C. 227(c)(1)(A).