

initial call from a telemarketer or seller to be abusive and invasive of privacy. Several states responded to the growing consumer frustration with unsolicited telemarketing calls and the ineffectiveness of the company-specific approach by passing legislation to establish statewide "do-not-call" lists. To date, 27 states have passed such legislation, and numerous other states have considered similar bills.⁵⁹²

estimates that the annual number of outbound calls that are answered by a consumer is 16,129,411,765 (i.e., 16 billion calls). James C. Miller, III, Jonathan S. Bowater, Richard S. Higgins, and Robert Budd, "An Economic Assessment of Proposed Amendments to the Telemarketing Sales Rule," June 5, 2002, (hereinafter "Miller Study") at 28, Att. 1. This figure does not include those calls that are abandoned.

⁵⁹² DNC Tr. at 16, 137, 157-58. As of August, 2002, 27 states had passed "do-not-call" statutes. Florida established the first state "do-not-call" list in 1987. (Fla. Stat. Ann. § 501.059). Oregon and Alaska followed with "do-not-call" statutes in 1989. Instead of a central registry, these two states opted to require telephone companies to place a black dot in the telephone directory by the names of consumers who do not wish to receive telemarketing calls. (1999 Or. Laws 564; Alaska Stat. Ann. § 45.50.475). In 1999, Oregon replaced its "black dot" law with a "no-call" central registry program. (Or. Rev. Stat. § 464.567). See also article regarding Oregon law in 78 *BNA Antitrust & Trade Reg. Report* 97 (Feb. 4, 2000). After those three states adopted their statutes, there was little activity at the state level for about a decade. Then, in 1999, a new burst of legislation occurred as five more states passed "do-not-call" legislation—Alabama (Ala. Code § 8-19C); Arkansas (Ark. Code Ann. § 4-99-401); Georgia (Ga. Code Ann. § 46-5-27; see also rules at Ga. Comp. R. & Regs. 515-14-1); Kentucky (Ky. Rev. Stat. Ann. § 367.46955(15)); and Tennessee (Tenn. Code Ann. § 65-4-401; see also rules at Tenn. Comp. R. & Regs. Chap. 1220-4-11). During 2000, six more states enacted "do-not-call" statutes—Connecticut (Conn. Gen. Stat. Ann. § 42-288a); Idaho (Idaho Code § 48-1003); Maine (Me. Rev. Stat. § 4690-A); Missouri (Mo. Rev. Stat. § 407.1095); New York (N.Y. General Business Law § 399-z; see also rules at NY Comp. R. & Regs. tit. 12 § 4602); and Wyoming (Wyo. Stat. Ann. § 40-12-301). As of August, 2002, another eleven states had joined the ranks—California (S.B. 771, to be codified at Cal. Bus. & Prof. Code § 17590); Colorado (H.B. 1405, to be codified at Colo. Rev. Stat. § 6-1-901); Illinois (S.B. 1830, signed Aug. 9, 2002); Indiana (H.B. 1222, to be codified at Ind. Code Ann. § 24-4.7); Kansas (S.B. 296, to be codified at Kan. Stat. Ann. 2001 Supp. § 50-670, signed May 29, 2002); Louisiana (H.B. 175, to be codified at La. Rev. Stat. 45:844.11); Massachusetts (H.B. 5225, signed Aug. 10, 2002); Minnesota (S.B. 3246, to be codified at Minn. Stat. § 325E.311, signed May 15, 2002); Oklahoma (S.B. 950, to be codified at Okla. Stat. tit. 15 § 775B.1, signed Apr. 15, 2002); Pennsylvania (H.B. 1469, to be codified as amendment to Pa. Cons. Stat. § 2241; Texas (H.B. 472, to be codified at Tex. Bus. & Com. Code Ann. § 43.001); Vermont (S. 62, Pub. Act 120, to be codified at Vt. Stat. Ann. tit. 9 § 2464a, signed June 5, 2002); and Wisconsin (Section 2435 of 2001 Wisconsin Act 16, 2001 S.B. 55, to be codified at Wis. Stat. 100.52). In addition, numerous states are considering or recently have considered laws that would create state-run "do-not-call" lists, including Arizona, Delaware, District of Columbia, Hawaii, Illinois, Iowa, Maryland, Michigan, Mississippi, Montana, Nebraska, Nevada, New Jersey, North Carolina, Ohio, Rhode Island, South Carolina, South Dakota, Utah, Virginia, Washington, and

The comments received in response to the NPRM show that frustration with unsolicited telemarketing calls continues despite the efforts of the DMA, the states, and the TCPA/TSR company-specific approaches to the problem. Individual commenters overwhelmingly supported the establishment of a national "do-not-call" registry.⁵⁹³ This was true even of those individuals who were already signed up on their state's "do-not-call" registry or on the DMA's TPS.⁵⁹⁴ Although many of these individuals stated that they had found their state registry to be effective in reducing the number of unwanted calls, they thought that a national registry would be a beneficial addition to their state registry because, among other things, a central registry would eliminate some of the loopholes in the state laws, thus increasing coverage, and would provide the convenience of a one-stop method of reducing unwanted calls.⁵⁹⁵ Similarly, individuals who were signed up on the DMA's TPS list also said that the list had been effective in reducing the number of unwanted calls, yet they felt that a national registry was needed because they were still receiving unwanted calls.⁵⁹⁶

West Virginia. See CallCompliance table of state "do-not-call" laws and proposed legislation, <http://www.callcompliance.com/pages/STATElist.html> (accessed July 24, 2002). The "do-not-call" issue has also drawn the attention of federal legislators, who have introduced several bills aimed at addressing consumers' concerns. For example, in the 106th Congress, H.R. 3180 (introduced by Rep. Salmon) would have required telemarketers to tell consumers that they have a right to be placed on either the DMA's "do-not-call" list or on their state's "do-not-call" list. This proposal also would have required all telemarketers to obtain and reconcile the DMA and state "do-not-call" lists with their call lists. Similar legislation was introduced in the 107th Congress by Rep. King (H.R. 232, the "Telemarketing Victim Protection Act"). In addition, on December 20, 2001, Sen. Dodd introduced S. 1881, the "Telemarketing Intrusive Practices Act of 2001," which would require the FTC to establish a national "do-not-call" registry.

⁵⁹³ The Commission received approximately 64,000 email and written comments. Of those, approximately 44,000 supported the proposed national "do-not-call" registry, while only about 15,000 opposed the creation of such a registry. (The remaining 5,000 comments did not address this issue.)

⁵⁹⁴ The Commission received approximately 7,500 comments from consumers who live in states that have "do-not-call" statutes. See, e.g., Dan Seaman (AL) (Msg. 1127); Shawn Baumgartner (FL) (Msg. 2771); Edwin Rodriguez (CO) (Msg. 4573); Michelle Crouch (GA) (Msg. 4973); and Rona Owen (TX) (Msg. 6247).

⁵⁹⁵ See, e.g., Michelle Crouch (GA) (Msg. 4973); Dan Seaman (AL) (Msg. 1127) (state registry has too many exemptions); Clive and Jane Romig (FL) (Msg. 19125) (current remedies are inadequate).

⁵⁹⁶ See, e.g., Robert Winters (Msg. 18984) (resurgence of calls after a while); Gregory Stahmer (Feb. 21, Part 6, Msg. 150) (continues to get unwanted calls); Robert Baly (Feb. 27, Part 1, Msg. 551).

Consumer groups supported the creation of a national "do-not-call" registry,⁵⁹⁷ and some privacy advocates urged the Commission to take an even more restrictive "opt-in" approach by banning telemarketing to any consumer who has not expressly agreed to receive telephone solicitations.⁵⁹⁸ With certain caveats, state regulators also supported the proposal for a national "do-not-call" registry.⁵⁹⁹ Some states that already have a state "do-not-call" list in place indicated that a national list would complement the current regime of state legislation and could be an effective addition to the arsenal of tools available to consumers in reducing unwanted calls.⁶⁰⁰ However, states and consumer advocates cautioned that such a system should be implemented in close coordination with the states and should not supplant more restrictive state laws.⁶⁰¹

Industry commenters generally believed that the current system is working and that a national "do-not-call" registry is unnecessary.⁶⁰² They expressed the view that the DMA's Telephone Preference Service ("TPS") is tantamount to a national "do-not-call" registry. In fact, according to their comments, the TPS has greater coverage than the FTC registry would have because it covers certain entities such as common carriers, banks, and charitable organizations beyond FTC jurisdiction.⁶⁰³ They argued that these

⁵⁹⁷ AARP-NPRM at 1; CCA-NPRM at 1; ConsumerPrivacyGuide.com-NPRM at 1; EPIC-NPRM at 2-3; LSAP-NPRM at 12-15; NAAG-NPRM at 4; NACAA-NPRM at 2; NARUC-NPRM at 1, 3; NASUCA-NPRM at 2; NCL-NPRM at 8; NCLC-NPRM at 13; PRC-NPRM at 1; Worsham-NPRM at 1. The U.S. Department of Justice also supported the creation of a national "do-not-call" list maintained by the FTC. DOJ-NPRM at 4-5.

⁵⁹⁸ See, e.g., EPIC-NPRM at 3; Worsham-NPRM at 5.

⁵⁹⁹ See, e.g., CCA-NPRM at 1; Connecticut-NPRM at 1-2, 3; DC-NPRM at 4; Kansas-NPRM at 2; NAAG-NPRM at 4-29; NYSCPB-NPRM at 1-2; Tennessee-NPRM at 2; Texas PUC-NPRM at 1, 2; Virginia-NPRM at 1-2.

⁶⁰⁰ CCA-NPRM at 1; Connecticut-NPRM at 1; Kansas-NPRM at 1; NAAG-NPRM at 6, 12, 29; NYSCPB-NPRM at 1-2; Tennessee-NPRM at 2.

⁶⁰¹ Connecticut-NPRM at 1-2, 3; Kansas-NPRM at 1; NAAG-NPRM at 6-13; NACAA-NPRM at 4-5; NCL-NPRM at 9; NYSCPB-NPRM at 2-4, 13-17; Private Citizen-NPRM at 2; Tennessee-NPRM at 2, 9-10; Texas PUC-NPRM at 3-4. See also June 2002 Tr. I at 19-40.

⁶⁰² See, e.g., ATA-NPRM at 21-25; Craftmatic-NPRM at 3; DMA-NPRM at 7-8; ERA-NPRM at 5, 28; Fleet-NPRM at 2; Green Mountain-NPRM at 21-23; Lenox-NPRM at 4-5; MPA-NPRM at 34-35; Noble-NPRM at 2; NATN-NPRM at 2; NSDI-NPRM at 3; Pacesetter-NPRM at 2-3; PMA-NPRM at 6; Synergy Solutions-NPRM at 2; Technion-NPRM at 4; Teleperformance-NPRM at 2; TeleStar-NPRM at 2; TRC-NPRM at 2; Weber-NPRM at 2.

⁶⁰³ See, e.g., ATA-NPRM at 24-25; DMA-NPRM at 8-11; ERA-NPRM at 27-28; MPA-NPRM at 34-35; Noble-NPRM at 2; NATN-NPRM at 2; NSDI-NPRM