

gaps in the national registry's coverage due to the FTC's limited jurisdiction would make a national "do-not-call" list more confusing than helpful to consumers.⁶⁰⁴ Some industry members suggested that the states are the more appropriate forum for creation of "do-not-call" lists.⁶⁰⁵ Some of these commenters argued that, unlike a national list, that must be "one size fits all," states can be more responsive to the needs of their citizens and tailor their lists to those differing needs.⁶⁰⁶

The record in this matter overwhelmingly shows the contrary—as detailed earlier, it shows that the company-specific approach is seriously inadequate to protect consumers' privacy from an abusive pattern of calls placed by a seller or telemarketer. The comments also show that consumers continue to be angered by and frustrated with the pattern of unsolicited telemarketing calls they receive from the multitude of sellers and telemarketers. A national "do-not-call" registry addresses both types of abuse. It provides a mechanism that a consumer may use to indicate that he or she finds unsolicited telemarketing calls abusive and an invasion of privacy. It will also protect a consumer from repeated abusive calls from a seller or telemarketer. These problems cannot be fully addressed by state lists. While state "do-not-call" lists may be effective in reducing calls for the citizens in those states, about half the states do not have such legislation. A federal list would protect those consumers who are not currently protected. In addition, as EPIC pointed out in its comment, the state "do-not-call" lists vary with regard to exempt entities, with some containing so many exemptions that virtually all telemarketers are exempt.⁶⁰⁷ A federal list would provide uniformity with regard to those entities within the FTC's jurisdiction. Finally, although industry touts the state lists as

the appropriate approach to "do-not-call," they also challenge the states' authority to regulate interstate calls under the state "do-not-call" laws.⁶⁰⁸ The Telemarketing Act grants the states the authority to enforce the TSR in federal court.⁶⁰⁹ Therefore, a national "do-not-call" registry maintained by the FTC pursuant to the TSR (and enforceable by the states) would quell any challenges to state "do-not-call" enforcement with respect to interstate telemarketing.

Some industry members would have the FTC forget about a national registry and continue to let consumers use the current national self-regulatory system set up through DMA's TPS.⁶¹⁰ DMA has provided an important public service by administering the TPS, and the Commission applauds the efforts of the industry to regulate itself. However, the self-regulatory model has two serious shortcomings which limit its use as an effective national "do-not-call" registry: a self-regulatory system is voluntary; and to the extent that sanctions exist for non-compliance, DMA may apply those sanctions only against its members, not non-members.⁶¹¹ On the other hand, lists established pursuant to the FTC Act and the Telemarketing Act, as well as those established pursuant to state law, have the force of law, and violators are subject to civil penalties. This type of sanction makes it more likely that companies will take their "do-not-call" obligations seriously.

The Commission recognizes that its jurisdictional limitations will impact the effectiveness of a national "do-not-call" registry. However, the Commission notes that while certain specific entities are exempt from coverage, the telemarketing companies that solicit on their behalf are nonetheless covered by the TSR.⁶¹² Moreover, many consumers have signed up for state "do-not-call" lists,⁶¹³ all of which include various

exemptions. Consumers in those states have accepted the limitations of the state "do-not-call" lists and have been satisfied at the prospect of at least *reducing* the number of unwanted telephone solicitations that they receive.⁶¹⁴ Indeed, an FTC registry may be more inclusive than some state "do-not-call" lists.⁶¹⁵ The Commission believes that consumer education will minimize consumer confusion over what calls will and will not be allowed under a national "do-not-call" registry.

Industry pointed to the economic importance of outbound telemarketing, which accounted for \$274.2 billion in 2001,⁶¹⁶ and warned that a national "do-not-call" registry would have dire economic consequences.⁶¹⁷ In its supplemental comments, DMA submitted a study showing "the face of the telemarketing industry."⁶¹⁸ According to DMA predictions, job losses would impact most seriously on women, minorities, and rural areas—the groups and regions from which most telemarketers are drawn.⁶¹⁹ Individual sellers and telemarketing firms estimated that they might have to lay off up to 50 percent of their employees if such a registry were to go into effect.⁶²⁰ Numerous individual telemarketers submitted comments in which they talked about the pride they have in their work and their fear of losing their livelihood.⁶²¹

WALL ST. J., Apr. 11, 2002, at A2. *See also* NAAG-NPRM at 4, n.3.

⁶¹⁴ *See generally* June 2002 Tr. I at 110-21.

⁶¹⁵ *See* EPIC-NPRM at 19 (noting that some state laws are ineffective due to the number of exempted entities).

⁶¹⁶ DMA, "The Faces and Places of Outbound Telemarketing in the United States," (June 2002) ("DMA study") at 1.

⁶¹⁷ *See id.* *See also* NATN-NPRM at 1; NSDI-NPRM at 2; Success Marketing-NPRM at 2; Synergy Solutions-NPRM at 1.

⁶¹⁸ DMA study, *see* note 616 above.

⁶¹⁹ The DMA study indicates that teleservices workers are overwhelmingly female, high-school educated, and African-American or Hispanic. Almost 62 percent of all females working as teleservices agents are working mothers, and 30 percent are part of a welfare-to-work program or were recently on public assistance. DMA study at 2. The study also indicates that outbound telemarketing call centers can be found in every state, often in rural areas or small towns and cities that are economically distressed. *Id.* at 4. *See also* NATN-NPRM at 1; NSDI-NPRM at 2; Success Marketing-NPRM at 2; Synergy Solutions-NPRM at 1.

⁶²⁰ *See* NATN-NPRM at 1; NSDI-NPRM at 2; Success Marketing-NPRM at 2; Synergy Solutions-NPRM at 1; Teleperformance-NPRM at 2; TRC-NPRM at 2-3. However, the Commission notes that these companies offered no analysis to substantiate their claims regarding the impact of the national registry.

⁶²¹ *See, e.g.,* Alhafez (Mar. 22, part 1, Msg. 1712); Cameron (Mar. 6, part 1, Msg. 951); Dillon (Mar. 21, part 2, Msg. 1622). *See also, e.g.,* ACI Telecentrics-

at 3; Synergy Solutions-NPRM at 2; Technion-NPRM at 4; Teleperformance-NPRM at 2; TRC-NPRM at 2.

⁶⁰⁴ *See, e.g.,* ERA-NPRM at 28, 36; MPA-NPRM at 34-35; Noble-NPRM at 2; NATN-NPRM at 2; NSDI-NPRM at 3; Synergy Solutions-NPRM at 2; Technion-NPRM at 4; Teleperformance-NPRM at 2; TRC-NPRM at 2.

⁶⁰⁵ *See, e.g.,* ATA-NPRM at 23-25; Noble-NPRM at 2; NATN-NPRM at 2; NSDI-NPRM at 3; possibleNOW.com-NPRM at 1; Success Marketing-NPRM at 2; Synergy Solutions-NPRM at 2; Technion-NPRM at 4; Teleperformance-NPRM at 2; TRC-NPRM at 2. *See also* Tennessee-NPRM at 6-7.

⁶⁰⁶ *See, e.g.,* ATA-NPRM at 23-25; Noble-NPRM at 2; NATN-NPRM at 2; NEMA-NPRM at 4; NSDI-NPRM at 3; possibleNOW.com-NPRM at 1; Success Marketing-NPRM at 2; Synergy Solutions-NPRM at 3; Teleperformance-NPRM at 2; TRC-NPRM at 2. *See also* Tennessee-NPRM at 6-7.

⁶⁰⁷ EPIC-NPRM at 19.

⁶⁰⁸ *See, e.g.,* ATA-NPRM at 24.

⁶⁰⁹ 15 U.S.C. 6108.

⁶¹⁰ *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.

⁶¹¹ DMA has about 5,000 members. DMA-NPRM at 1.

⁶¹² 67 FR at 4497.

⁶¹³ For example, Missouri and Indiana each have more than 1 million telephone numbers on their lists; New York's list contains more than 2 million numbers. *See Missouri No Call Tops 1 Million Three Days Before One-Year Anniversary of Law*, Office of Missouri Attorney General, June 28, 2002, <http://www.ag.state.mo.us/062802.htm>; and David Wessel, *On Hold: Gagging the Telemarketers*,

Continued