

The Commission recognizes that telemarketing is a legitimate method of selling goods and services. It is important to remember that the "do-not-call" registry will impact only outbound telemarketing, and will have no effect whatsoever on the greater portion of the industry devoted to inbound calls from consumers.⁶²² The Commission also recognizes the importance of outbound telemarketing to federal, state, and local economies. Telemarketing provides needed jobs to rural areas and small towns that often face high unemployment, and to people who often face difficulties in obtaining other employment, such as individuals moving off of welfare.

Although industry fears the economic impact a national registry might have, ironically, an FTC "do-not-call" registry may actually benefit rather than harm industry. For example, the federal framework, with its exemptions, would provide greater consistency of coverage, at least with regard to interstate calls. In addition, industry would benefit because telemarketers would reduce time spent calling consumers who do not want to receive telemarketing calls and would be able to focus their calls only on those who do not object to such calls.⁶²³

Industry emphasized the importance of harmonizing federal and state laws. To the extent that industry members supported creation of a national "do-not-call" list, they conditioned their support on preemption of state laws.⁶²⁴ These commenters argued that the major, if not only, benefit to industry from a national "do-not-call" registry would be to eliminate the costs of purchasing multiple lists and complying with a patchwork of potentially 50 different state laws.⁶²⁵ Absent

preemption, industry believed that a national registry would only add another layer of bureaucracy and one more list that they must purchase.⁶²⁶ The June 2002 Forum discussed in depth the interplay between the national "do-not-call" registry and state laws. Participants agreed that the Commission should seek comity with state laws, and that a single list would provide substantial benefits to both industry and consumers.⁶²⁷

For example, Dr. James Miller, testifying on behalf of CCC, estimated that if the Commission's "do-not-call" proposal were enacted as proposed, it would cost all firms that sell their products via outbound telemarketing combined a total of \$6.6 million to purchase access to the FTC's "do-not-call" registry and to check their calling lists against the "do-not-call" list to ensure that they do not call consumers who have asked not to be called.⁶²⁸ If companies could comply with both FTC and state regulations by purchasing access to the FTC's list and not calling consumers whose numbers appeared on that list, this would represent the total burden on firms to avoid calling consumers who did not wish to be called. However, Dr. Miller testified that the total cost to comply with the state regulations as well as the FTC requirements, should firms still have to purchase separate lists from each state having its own do-not-call provisions, could approximate \$100 million.⁶²⁹

Finally, commenters raised various issues and offered suggestions relating to the implementation of a national "do-not-call" registry. For example, various commenters questioned the accuracy of automatic number identification ("ANI") verification, the length of time a consumer's telephone number should remain on the list, who should be able to sign up for the list, whether the Commission should allow third parties to submit telephone numbers, the type

of information that should be collected, and the accuracy of the Commission's cost estimates.⁶³⁰ These issues are discussed in the section below addressing implementation.

Coverage of the "do-not-call" provisions. A number of commenters asked the Commission to clarify coverage of its "do-not-call" provisions. Some queried whether calls to home businesses would be subject to the "do-not-call" requirements.⁶³¹ The Rule exempts telemarketing calls to businesses (except for sellers or telemarketers of nondurable office or cleaning supplies). Therefore, calls to home businesses would not be subject to the amended Rule's "do-not-call" requirements.

Some commenters asked whether the "do-not-call" requirements would cover calls to cellular or wireless telephones and pagers. The Commission intends that § 310.4(b)(1)(iii) apply to any call placed to a consumer, whether to a residential telephone number or to the consumer's cellular telephone or pager. Consumers are increasingly using cellular telephones in place of regular telephone service,⁶³² which is borne out by the dramatic increase in cellular phone usage.⁶³³ The Commission believes that it is particularly important to allow consumers an option to reduce unwanted telemarketing calls to cellular telephones or to pagers because some cellular services charge the consumer for incoming calls, thus adding insult to injury when the consumer is charged for

Levie (Msg. 19322); InfoCision Management-Davis (Msg. 23968); HFC-Beneficial-Darst (Msg. 33709); Household-Alioto (Msg. 27876); LTD Direct-Rockwood (Msg. 27601); and TCIM Services Inc.-Davis (Msg. 22871).

⁶²² In 2001, inbound telemarketing accounted for 55 percent of total teleservice expenditures and was expected to grow to 62 percent by 2004.

Winterberry Group, "Industry Map: Teleservice Industry—Multi-Channel Marketing Drives Universal Call Centers" at 9 (Jan. 2001).

⁶²³ Industry representatives also have indicated that they do not wish to call consumers who do not want to receive telemarketing calls. See DNC Tr. at 41, 51, 53-56, 61, 71.

⁶²⁴ See, e.g., AFSA-NPRM at 3-5; Craftmatic-NPRM at 3; Discover-NPRM at 2; HSBC-NPRM at 1; MBA-NPRM at 2; NCTA-NPRM at 15-16; NRF-NPRM at 7-8; Nextel-NPRM at 3-4, 26-27; PMA-NPRM at 28; SIIA-NPRM at 3; Time-NPRM at 3-4; Community Bankers-Supp. at 4; ARDA-Supp. at 1; ICTA-Supp. at 1. See also June 2002 Tr. at 19-40.

⁶²⁵ See, e.g., AFSA-NPRM at 3-5; Craftmatic-NPRM at 3; Discover-NPRM at 2; HSBC-NPRM at 1; MBA-NPRM at 2; NCTA-NPRM at 15-16; NRF-NPRM at 7-8; Nextel-NPRM at 3-4, 26-27; PMA-NPRM at 28; SIIA-NPRM at 3; Time-NPRM at 3-4.

⁶²⁶ *Id.*

⁶²⁷ See June 2002 Tr. I at 19-40.

⁶²⁸ See June 2002 Tr. I at 209. Dr. Miller's testimony drew from the Miller Study (see note 591 above). As the study explains, the \$6.6 million figure assumes that 3,000 firms will pay \$1,000 each on average to obtain access to the list and that it will take the average firm approximately two hours of effort at a cost of \$50 per hour each time it is necessary to compare the firm's calling list against the "do-not-call" registry. As proposed in the NPRM, firms would have been required to do this comparison 12 times each year so that the average firm would have incurred a total expense of \$2,200. Miller does not require firms to compare their calling lists to the FTC's "do-not-call" registry monthly as did the NPRM proposal, the estimated cost using Dr. Miller's methodology would now be around \$4.5 million.

⁶²⁹ See June 2002 Tr. I at 209.

⁶³⁰ See, e.g., AFSA-NPRM at 4-10; Craftmatic-NPRM at 3; DC-NPRM at 5; DialAmerica-NPRM at 13; Discover-NPRM at 3; EPIC-NPRM at 14; ERA-NPRM at 29-32; HSBC-NPRM at 2; MBA-NPRM at 2; NYSCPB-NPRM at 7-13. See also June 2002 Tr. I at 138-271.

⁶³¹ See, e.g., IBM-NPRM at 11-12; Pelland-NPRM at 3.

⁶³² See FCC Notice of Proposed Rulemaking and Memorandum Opinion and Order in the Matter of Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, CG Docket No. 02-278, CC Docket No. 92-90 (Sept. 18, 2002) (hereinafter "FCC TCPA 2002") at 27, para. 42 (citing a USA Today/CNN/Gallop poll showing that one in five mobile telephone users use their wireless phone as their primary phone, Michelle Kessler, 18 % See Cellphones as Their Main Phone, USA TODAY, Feb. 1, 2002). See also Wendy Ruenzel, *More Cell Phone Users Dispense with Traditional Phone Line*, POST CRESCENT, Aug. 6, 2001; Simon Romero, *When the Cellphone Is the Home Phone*, N.Y. TIMES, Aug. 29, 2002; Joelle Tessler, *Small But Growing Number of Cell Phone Users Abandon Land Lines*, SAN JOSE MERCURY NEWS, Aug. 15, 2002.

⁶³³ See FCC TCPA 2002 at 26-27, para. 42, n.160 (noting that, in the ten-year period between 1991 and 2001, the number of wireless subscribers increased from about 7.5 million to approximately 128 million. From 1993 to 2001, the average minutes of use per subscriber per month increased from 140 minutes to 385 minutes.) (citations omitted).