

the Internet. Consumers who choose to register by phone will have to call the registration number from the telephone line that they wish to register. Their calls will be answered by an Interactive Voice Response ("IVR") system. After a brief introductory message, the consumer will be asked to enter on his or her telephone keypad the telephone number from which the consumer is calling. The number entered will be checked against the automatic number information ("ANI") that is transmitted with the call. If the telephone number the consumer enters on the keypad matches the ANI of the line from which the consumer is calling, then the IVR system will inform the consumer that the number is registered and the call will end. If the telephone number does not match, the IVR system will advise the consumer to call back from the telephone the consumer wishes to register. In the small percentage of calls in which ANI is not available, the system will offer other verification options.

Using this process, the Commission will verify, at a minimum, that each consumer is calling from a telephone line assigned the number the consumer is attempting to register. The Commission has determined that this is sufficient verification for the limited purposes involved here — ensuring that a telephone number in the national registry was entered by someone in the household to which that telephone number is assigned.⁷⁰⁴ A number of commenters stated that the FTC should prohibit third parties from registering consumers' preferences not to receive telemarketing calls with the national "do-not-call" registry, citing concerns that such third-party registrations could lead to abuse.⁷⁰⁵ The Commission agrees that third-party registrations should not be permitted, and believes that the verification procedures to be established for telephone registrations will prevent these potential types of

third-party abuse, because the person registering will have to be present physically in the household with which the telephone number being registered is associated.

Other commenters suggested that only the line subscriber or person who is billed for the telephone line be allowed to register that number in the national registry.⁷⁰⁶ In fact, one commenter suggested that the FTC should "permit each adult user of the telephone to prevent calls to him or herself, but not to be able to bar all calls to all adults using that telephone."⁷⁰⁷ The Commission does not believe this is a realistic approach. Because numerous people in a household often share a common telephone number, the Commission has determined that the decision to be part of the "do-not-call" registry does not rest with the line subscriber (or any single resident) alone. In such a shared-number situation, the privacy rights of all are affected by unwanted telemarketing calls. Thus, the decision to register the household telephone number in the national registry is a joint decision of all household members. The Commission's telephone registration system will accept the registration from any member of the household, but will remind consumers that they are registering on behalf of all household members.⁷⁰⁸

⁷⁰⁶ See, e.g., DialAmerica-NPRM at 13; Nextel-NPRM at 26.

⁷⁰⁷ AFSA-NPRM at 8.

⁷⁰⁸ Several commenters supported allowing any household member to register the household telephone number. See, e.g., NCL-NPRM at 9 (allow registration requests to be made by the line subscriber, spouse, roommate, care giver, or others with a legitimate interest). One telemarketer that calls on behalf of non-profit organizations opposed this view, commenting that "each person has an individual, separate constitutional right to speak and be in association with other like-minded people, and the groups to which they belong also have the right to contact their members and the public at large. When dealing with fully protected, non-commercial speech, any do-not-call list that keeps track only of numbers, rather than names and numbers, needs some way to be certain that everyone who is lawfully and regularly reached at a telephone number has consented to be cut off from the organizations to which they belong." Hudson Bay-Goodman-NPRM at 13 (emphasis omitted). As an initial matter, non-commercial speech is not covered by the national "do-not-call" provisions of the amended Rule. See amended Rule § 310.6(a) (exempting solicitations to induce charitable contributions via outbound telephone calls from § 310.4(b)(1)(iii)(B) of the Rule). Moreover, the Commission has determined that to accomplish its privacy protection objectives, there is no workable alternative to allowing any member of a household to exercise the "do-not-call" rights of the entire household using a shared telephone number. Households in which one member wants to sign up with the national "do-not-call" registry and another does not have the option of subscribing to an additional telephone line that is not on the registry and may therefore receive telemarketing calls, or they can provide express authorization to

Consumers who choose to register via the Internet will go to a website dedicated to the registration process, where they will be asked to enter the telephone number they wish to register. Consumers will be told that they may register only their household or personal telephone number(s). As with the telephone registration system, they will be reminded that if they share a household number with others, they are registering on behalf of all household members. The Commission is considering two possible methods for verifying consumers' information. One possible option is that a consumer will be asked to enter certain address information, such as his or her zip code and the numeric portion of his or her street address, which the system would then check against a national database to ensure that it matches the telephone number provided. The second possible option is that the consumer will be asked to enter his or her email address; the system will send a confirming email to that address, and the consumer will then have to respond to reconfirm his or her registration decision.

The Commission will use one or both of these verification methods for Internet registrations. Such verification processes will enhance the likelihood that individuals will register their own telephone numbers. If the email verification process is used, the Commission will also develop procedures to prevent large numbers of registrations from being confirmed through the same email account. Once again, the Commission has determined that these are sufficient verification procedures for the limited purpose of adding telephone numbers to the national "do-not-call" registry, and should help prevent the potential abuses cited concerning massive third-party registrations.

specific entities to receive telemarketing calls from them, regardless of their national registry status, pursuant to § 310.4(b)(1)(iii)(B)(i) of the amended Rule. The Commission notes that the "do-not-call" provisions will not "cut off" individuals from organizations or sellers because it will not foreclose other means of communication with any member of the household, such as by conventional mail, email, or door to door solicitation. The "do-not-call" provisions are strongly analogous to laws requiring solicitors to honor a "no solicitation" sign posted by a homeowner, which the Supreme Court has approved in such cases as *Martin v. Struthers*, 319 U.S. 141 (1941), involving "a form of regulation . . . which would make it an offense for any person to ring the bell of a householder who has appropriately indicated that he is unwilling to be disturbed." According to the Court, "[t]his or any similar regulation leaves the decision as to whether distributors of literature may lawfully call at a home where it belongs—with the homeowner himself. A city can punish those who call at a home in defiance of the previously expressed will of the occupant. . . ." *Id.* at 148.

⁷⁰⁴ Unlike the Commission's cases challenging the unauthorized billing of goods or services to consumers' telephone numbers based solely on ANI verification, see, e.g., *FTC v. Verity Int'l, Ltd.*, No. 00 Civ. 7422 (LAK) (S.D.N.Y. 2000); *FTC v. American TelNet, Inc.*, No. 99-1587 CIV:KING (S.D. Fla. 1999), the verification process needed to ensure the validity of numbers in the national registry is much less stringent. Here, only the right not to receive unwanted telemarketing calls is being asserted; the line subscriber is not incurring charges for goods and services, possibly purchased by unauthorized third parties, based on ANI information.

⁷⁰⁵ See, e.g., DialAmerica-NPRM at 13; Household-NPRM at 13; Texas PUC-NPRM at 2; PMA-NPRM at 29. NAAG also cited recent state cases against companies that have deceptively offered to add consumers' numbers, for a fee, to "do-not-call" lists. See NAAG-NPRM at 19, n.47.