Telephone Consumer Protection Act[1]

Introduction

The Federal Communications Commission (FCC) has issued regulations that establish a national "Do-Not-Call" registry and other modifications to the Telephone Consumer Protection Action of 1991 (TCPA)[2]. The FCC regulations impose financial penalties on all commercial telemarketers for calling phone numbers on the "Do-Not-Call" registry. For those numbers not on the registry, the regulations set a maximum rate on the number of abandoned calls and require telemarketers to transmit caller ID information. The regulations also modify the FCC's unsolicited facsimile advertising requirements, which in turn were modified by the Junk Fax Prevention Act of 2005 and became effective on July 9, 2005. The FCC regulations were, generally, effective as of October 1, 2003.

The FCC regulation expanded coverage of the national "Do-Not-Call"[3] registry by including banks, insurance companies, credit unions, and savings associations. The Federal Trade Commission's (FTC) telemarketing regulations parallel the FCC regulations[4] and apply to all other business entities, including third parties acting as agent or on behalf of a financial institution.

Key Definitions:

"Abandoned Call" A telephone call that is not transferred to a live sales agent within two seconds of the recipient's completed greeting.

"Automatic Telephone Dialing System and Autodialer" Equipment that has the capacity to store or produce telephone numbers to be called using a random or sequential number generator and the capability to dial such numbers.

"Established Business Relationship" A prior or existing relationship between a person or entity and a residential subscriber based on the subscriber's purchase or transaction with the entity within the 18 months immediately preceding the date of the telephone call or on the basis of the subscriber's inquiry or application regarding products or services offered by the entity within the three months immediately preceding the date of the call, and neither party has previously terminated the relationship. An individual may reasonably expect that an affiliate is included in an established business relationship based on products offered or the identity of the affiliate.

"Residential Subscriber" An individual who has contracted with a common carrier to provide telephone exchange service at a personal residence.

"Seller" The person or entity on whose behalf a telephone call or message is initiated for the purpose of encouraging purchase or rental of, or investment in, property, goods, or services, which is transmitted to any person.

"Telemarketer" The person or entity that initiates a telephone call or message for the purpose of encouraging the purchase or rental of, or investment in, property, goods, or services, which is transmitted to any person.

"Telemarketing" The initiation of a telephone call or message for the purpose of encouraging the purchase or rental of, or investment in, property, goods, or services, which is transmitted to any person.

"Telephone Solicitation" The initiation of a telephone call or message for the purpose of encouraging the purchase or rental of, or investment in, property, goods, or services, which is transmitted to any person. Telephone solicitation does not include a call or message to any person with that person's permission, to any person with whom the caller has an established business relationship, or on behalf of a tax-exempt nonprofit organization.

"Unsolicited Advertisement" Any material that advertises the commercial availability or quality of any property, goods, or services, which is transmitted to any person without that person's prior express invitation or permission.

General Requirements of TCPA

The FCC regulations that implement the Telephone Consumer Protection Act of 1991 provide consumers with options to avoid unwanted telephone solicitations. The regulations address the following:

- The FCC's adoption of a national "Do-Not-Call" registry that expands coverage to entities regulated by the FTC.[5]
- Under the FCC's rules, no seller or entity telemarketing on behalf of the seller can initiate a telephone solicitation to a residential telephone subscriber who has registered his

1 This section fully incorporates the examination procedures issued under DSC RD Memo 05-047: Procedures for Examination Compliance with Controlling the Assault of Non-Solicited Pornography and Marketing Act and Telephone Consumer Protection Act.

2 47 USC 227; The Federal Communications Commission final regulations were published in the Federal Register on July 25, 2003 (68 FR 44144).

3 The Federal Trade Commission (FTC) maintains the registry adopted by the FCC.

4 The Federal Trade Commission final regulations were published in the Federal Register on January 29, 2003. (68 FR 4580)

5 By doing so, the FCC asserts its considerably broader jurisdiction over telemarketing than the FTC. Specifically, telemarketing by in-house employees of banks, savings associations, and credit unions, as well as other areas of commerce, are covered by the FCC's authority.