

machine in violation of the Commission's rules;

(g)(2) the number of citations issued by the Commission pursuant to Title 47, §503 [which governs FCC-imposed fines] during the year to enforce any law, regulation, or policy relating to sending of unsolicited advertisements to telephone facsimile machines;

(g)(3) the number of notices of apparent liability issued by the Commission pursuant to Title 47, §503 during the year to enforce any law, regulation, or policy relating to sending of unsolicited advertisements to telephone facsimile machines;

(g)(4) for each notice referred to in paragraph (g)(3)--

(g)(4)(A) the amount of the proposed forfeiture penalty involved;

(g)(4)(B) the person to whom the notice was issued;

(g)(4)(C) the length of time between the date on which the complaint was filed and the date on which the notice was issued; and

(g)(4)(D) the status of the proceeding;

(g)(5) the number of final orders imposing forfeiture penalties issued pursuant to Title 47, §503 during the year to enforce any law, regulation, or policy relating to sending of unsolicited advertisements to telephone facsimile machines;

(g)(6) for each forfeiture order referred to in paragraph (g)(5)--

(g)(6)(A) the amount of the penalty imposed by the order;

(g)(6)(B) the person to whom the order was issued;

(g)(6)(C) whether the forfeiture penalty has been paid; and

(g)(6)(D) the amount paid;

(g)(7) for each case in which a person has failed to pay a forfeiture penalty imposed by such a final order, whether the Commission referred such matter for recovery of the penalty; and

(g)(8) for each case in which the Commission referred such an order for recovery--

(g)(8)(A) the number of days from the date the Commission issued such order to the date of such referral;

(g)(8)(B) whether an action has been commenced to recover the penalty, and if so, the number of days from the date the Commission referred such order for recovery to the date of such commencement; and

(g)(8)(C) whether the recovery action resulted in collection of any amount, and if so, the amount collected.

Created by Public Law 102-243, §3(a) (105 Stat. 2395), effective December 20, 1991.

Amended by Public Law 102-556, Title IV, §402 (106 Stat. 4194), effective Oct. 28, 1992;

Public Law 103-414, Title III, §§303(a)(11)-303(a)(12) (108 Stat. 4294), effective October 24, 1994; Public Law 108-187, §12 (117 Stat. 2699), effective January 1, 2004; and Public Law 109-21 (119 Stat. 359, 362), effective July 9, 2005.

Title 47, Code of Federal Regulations

§64.1200 Prohibited Communications by Telephone or Fax

(a) No person or entity may:

(a)(1) Initiate any telephone call (other than a call made for emergency purposes or made with the prior express consent of the called party) using an automatic telephone dialing system or an artificial or prerecorded voice,

(a)(1)(i) To any emergency telephone line, including any 911 line and any emergency line of a hospital, medical physician or service office, health care facility, poison control center, or fire protection or law enforcement agency;

(a)(1)(ii) To the telephone line of any guest room or patient room of a hospital, health care facility, elderly home, or similar establishment; or

- (a)(1)(iii) To any telephone number assigned to a paging service, cellular telephone service, specialized mobile radio service, or other radio common carrier service, or any service for which the called party is charged for the call;
 - (a)(1)(iv) Is made to any person with whom the caller has an established business relationship at the time the call is made; or
 - (a)(1)(v) Is made by or on behalf of a tax-exempt nonprofit organization.
- (a)(2) Initiate any telephone call to any residential line using an artificial or prerecorded voice to deliver a message without the prior express consent of the called party, unless the call,
- (a)(2)(i) Is made for emergency purposes,
 - (a)(2)(ii) Is not made for a commercial purpose,
 - (a)(2)(iii) Is made for a commercial purpose but does not include or introduce an unsolicited advertisement or constitute a telephone solicitation,
 - (a)(2)(iv) Is made to any person with whom the caller has an established business relationship at the time the call is made, or
 - (a)(2)(v) Is made by or on behalf of a tax-exempt nonprofit organization.
- (a)(3) Use a telephone facsimile machine, computer, or other device to send an unsolicited advertisement to a telephone facsimile machine,
- (a)(3)(i) For purposes of paragraph (a)(3), a facsimile advertisement is not "unsolicited" if the recipient has granted the sender prior express invitation or permission to deliver the advertisement, as evidenced by a signed, written statement that includes the facsimile number to which any advertisements may be sent and clearly indicates the recipient's consent to receive such facsimile advertisements from the sender.
 - (a)(3)(ii) A facsimile broadcaster will be liable for violations of paragraph (a)(3) if it demonstrates a high degree of involvement in, or actual notice of, the unlawful activity and fails to take steps to prevent such facsimile transmissions.
- (a)(4) Use an automatic telephone dialing system in such a way that two or more telephone lines of a multi-line business are engaged simultaneously.
- (a)(5) Disconnect an unanswered telemarketing call prior to at least 15 seconds or four rings.
- (a)(6) Abandon more than three percent of all telemarketing calls that are answered live by a person, measured over a 30-day period. A call is "abandoned" if it is not connected to a live sales representative within two seconds of the called person's completed greeting. Whenever a sales representative is not available to speak with the person answering the call, that person must receive, within two seconds after the called person's completed greeting, a prerecorded identification message that states only the name and telephone number of the business, entity, or individual on whose behalf the call was placed, and that the call was for "telemarketing purposes." The telephone number so provided must permit any individual to make a do-not-call request during regular business hours for the duration of the telemarketing campaign. The telephone number may not be a 900 number or any other number for which charges exceed local or long distance transmission charges. The seller or telemarketer must maintain records establishing compliance with paragraph (a)(6).
- (a)(6)(i) A call for telemarketing purposes that delivers an artificial or prerecorded voice message to a residential telephone line that is assigned to a person who either has granted prior express consent for the call to be made or has an established business relationship with the caller shall not be considered an abandoned call if the message begins within two seconds of the called person's completed greeting.
 - (a)(6)(ii) Calls made by or on behalf of tax-exempt nonprofit organizations are

not covered by paragraph (a)(6).

(a)(7) Use any technology to dial any telephone number for the purpose of determining whether the line is a facsimile or voice line.

(b) All artificial or prerecorded telephone messages shall:

(b)(1) At the beginning of the message, state clearly the identity of the business, individual, or other entity that is responsible for initiating the call. If a business is responsible for initiating the call, the name under which the entity is registered to conduct business with the State Corporation Commission (or comparable regulatory authority) must be stated, and

(b)(2) During or after the message, state clearly the telephone number (other than that of the autodialer or prerecorded message player that placed the call) of such business, other entity, or individual. The telephone number provided may not be a 900 number or any other number for which charges exceed local or long distance transmission charges. For telemarketing messages to residential telephone subscribers, such telephone number must permit any individual to make a do-not-call request during regular business hours for the duration of the telemarketing campaign.

(c) No person or entity shall initiate any telephone solicitation, as defined in paragraph (f)(9), to:

(c)(1) Any residential telephone subscriber before the hour of 8 a.m. or after 9 p.m. (local time at the called party's location), or

(c)(2) A residential telephone subscriber who has registered his or her telephone number on the national do-not-call registry of persons who do not wish to receive telephone solicitations that is maintained by the federal government. Such do-not-call registrations must be honored for a period of five years. Any person or entity making telephone solicitations (or on whose behalf telephone solicitations are made) will not be liable for violating this requirement if:

(c)(2)(i) It can demonstrate that the violation is the result of error and that as part of its routine business practice, it meets the following standards:

(c)(2)(i)(A) Written procedures. It has established and implemented written procedures to comply with the national do-not-call rules;

(c)(2)(i)(B) Training of personnel. It has trained its personnel, and any entity assisting in its compliance, in procedures established pursuant to the national do-not-call rules;

(c)(2)(i)(C) Recording. It has maintained and recorded a list of telephone numbers that the seller may not contact;

(c)(2)(i)(D) Accessing the national do-not-call database. It uses a process to prevent telephone solicitations to any telephone number on any list established pursuant to the do-not-call rules, employing a version of the national do-not-call registry obtained from the administrator of the registry no more than three months prior to the date any call is made, and maintains records documenting this process; and

(c)(2)(i)(E) Purchasing the national do-not-call database. It uses a process to ensure that it does not sell, rent, lease, purchase or use the national do-not-call database, or any part thereof, for any purpose except compliance with this section and any such state or federal law to prevent telephone solicitations to telephone numbers registered on the national database. It purchases access to the relevant do-not-call data from the administrator of the national database and does not participate in any arrangement to share the cost of accessing the national database, including any arrangement with telemarketers who

may not divide the costs to access the national database among various client sellers; or

(c)(2)(ii) It has obtained the subscriber's prior express invitation or permission. Such permission must be evidenced by a signed, written agreement between the consumer and seller which states that the consumer agrees to be contacted by this seller and includes the telephone number to which the calls may be placed; or

(c)(2)(iii) The telemarketer making the call has a personal relationship with the recipient of the call.

(d) No person or entity shall initiate any call for telemarketing purposes to a residential telephone subscriber unless such person or entity has instituted procedures for maintaining a list of persons who request not to receive telemarketing calls made by or on behalf of that person or entity. The procedures instituted must meet the following minimum standards:

(d)(1) Written policy. Persons or entities making calls for telemarketing purposes must have a written policy, available upon demand, for maintaining a do-not-call list.

(d)(2) Training of personnel engaged in telemarketing. Personnel engaged in any aspect of telemarketing must be informed and trained in the existence and use of the do-not-call list.

(d)(3) Recording, disclosure of do-not-call requests. If a person or entity making a call for telemarketing purposes (or on whose behalf such a call is made) receives a request from a residential telephone subscriber not to receive calls from that person or entity, the person or entity must record the request and place the subscriber's name, if provided, and telephone number on the do-not-call list at the time the request is made. Persons or entities making calls for telemarketing purposes (or on whose behalf such calls are made) must honor a residential subscriber's do-not-call request within a reasonable time from the date such request is made. This period may not exceed 30 days from the date of such request. If such requests are recorded or maintained by a party other than the person or entity on whose behalf the telemarketing call is made, the person or entity on whose behalf the telemarketing call is made will be liable for any failures to honor the do-not-call request. A person or entity making a call for telemarketing purposes must obtain a consumer's prior express permission to share or forward the consumer's request not to be called to a party other than the person or entity on whose behalf a telemarketing call is made or an affiliated entity.

(d)(4) Identification of sellers and telemarketers. A person or entity making a call for telemarketing purposes must provide the called party with the name of the individual caller, the name of the person or entity on whose behalf the call is being made, and a telephone number or address at which the person or entity may be contacted. The telephone number provided may not be a 900 number or any other number for which charges exceed local or long distance transmission charges.

(d)(5) Affiliated persons or entities. In the absence of a specific request by the subscriber to the contrary, a residential subscriber's do-not-call request shall apply to the particular business entity making the call (or on whose behalf a call is made), and will not apply to affiliated entities unless the consumer reasonably would expect them to be included given the identification of the caller and the product being advertised.

(d)(6) Maintenance of do-not-call lists. A person or entity making calls for telemarketing purposes must maintain a record of a caller's request not to receive further telemarketing calls. A do-not-call request must be honored for five years from the time the request is made.

(d)(7) Tax-exempt nonprofit organizations are not required to comply with §64.1200(d).

(e) The rules set forth in paragraph (c) and (d) are applicable to any person or entity making telephone solicitations or telemarketing calls to wireless telephone numbers to the extent described in the Commission's Report and Order, CG Docket No. 02-278, FCC 03-153, "Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991."

(f) As used in this section:

(f)(1) The terms automatic telephone dialing system and autodialer mean equipment which has the capacity to store or produce telephone numbers to be called using a random or sequential number generator and to dial such numbers.

(f)(2) The term emergency purposes means calls made necessary in any situation affecting the health and safety of consumers.

(f)(3)¹ The term established business relationship means a prior or existing relationship formed by a voluntary two-way communication between a person or entity and a residential subscriber with or without an exchange of consideration, on the basis of 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, which relationship has not been previously terminated by either party.

(f)(3)(i) The subscriber's seller-specific do-not-call request, as set forth in paragraph (d)(3), terminates an established business relationship for purposes of telemarketing and telephone solicitation even if the subscriber continues to do business with the seller.

(f)(3)(ii) The subscriber's established business relationship with a particular business entity does not extend to affiliated entities unless the subscriber would reasonably expect them to be included given the nature and type of goods or services offered by the affiliate and the identity of the affiliate.

(f)(4) The term facsimile broadcaster means a person or entity that transmits messages to telephone facsimile machines on behalf of another person or entity for a fee.

(f)(5) The term seller means the person or entity on whose behalf a telephone call or message is initiated for the purpose of encouraging the purchase or rental of, or investment in, property, goods, or services, which is transmitted to any person.

(f)(6) The term telemarketer means 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.

(f)(7) The term telemarketing means 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.

(f)(8) The term telephone facsimile machine means equipment which has the capacity to transcribe text or images, or both, from paper into an electronic signal and to transmit that signal over a regular telephone line, or to transcribe text or images (or both) from an electronic signal received over a regular telephone line onto paper.

(f)(9) The term telephone solicitation means 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, but such term does not include a call or message:

(f)(9)(i) To any person with that person's prior express invitation or permission;

¹ This paragraph was stayed, effective October 14, 2003, as it applies to time limitations on fax advertisements.

(f)(9)(ii) To any person with whom the caller has an established business relationship; or

(f)(9)(iii) By or on behalf of a tax-exempt nonprofit organization.

(f)(10) The term unsolicited advertisement means any material advertising 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.

(f)(11) The term personal relationship means any family member, friend, or acquaintance of the telemarketer making the call.

(g) Beginning January 1, 2004, common carriers shall:

(g)(1) When providing local exchange service, provide an annual notice, via an insert in the subscriber's bill, of the right to give or revoke a notification of an objection to receiving telephone solicitations pursuant to the national do-not-call database maintained by the federal government and the methods by which such rights may be exercised by the subscriber. The notice must be clear and conspicuous and include, at a minimum, the Internet address and toll-free number that residential telephone subscribers may use to register on the national database.

(g)(2) When providing service to any person or entity for the purpose of making telephone solicitations, make a one-time notification to such person or entity of the national do-not-call requirements, including, at a minimum, citation to 47 CFR §64.1200 and 16 CFR Part 310 [*the Federal Trade Commission's Telemarketing Sales Rule*]. Failure to receive such notification will not serve as a defense to any person or entity making telephone solicitations from violations of this section.

(h) The administrator of the national do-not-call registry that is maintained by the federal government shall make the telephone numbers in the database available to the States so that a State may use the telephone numbers that relate to such State as part of any database, list or listing system maintained by such State for the regulation of telephone solicitations.

Created by 57 Federal Register, Page 53293, effective November 9, 1992. Amended by 60 Federal Register, Page 42069, effective August 15, 1995; 68 Federal Register, Page 44177, effective July 25, 2003; 68 Federal Register, Page 59131, effective October 14, 2003; 69 Federal Register, Page 60316, effective October 8, 2004; and 70 Federal Register, Page 19337, effective April 13, 2005.