

## **FHH Telecom Law November 2003**

### **Don't Call Us -- We'll Call You**

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While the telemarketers continue pressing in court for their constitutional right to disturb people at dinner, fifty million households have let their fingers do the talking by signing up for the national do-not-call registry. Unlike earlier efforts to curb unwanted calls, the registry is nationwide in scope, covers both interstate and intrastate telemarketing calls, and bars most commercial solicitations. Still permitted to call are tax-exempt non-profit organizations, non-commercial calls that do not include advertisements (such as surveys), and calls from organizations having a previously established business relationship with the called party. That last exception allows a company to call for 18 months after a transaction, including a payment, so that most people's credit card companies, telephone providers, and the like can continue to call at will. The database is administered by the Federal Trade Commission (FTC), with enforcement coordinated between the FCC and the FTC.

Legally the federal rules constitute a floor, and thus supercede all less restrictive state do-not-call rules. States may adopt more restrictive do-not-call laws governing *intrastate* telemarketing, and federal regulation does not preempt those. State efforts to regulate *interstate* telemarketing would almost certainly be preempted, although the FCC promises to consider them on a case-by-case basis. Still, chances are that a telemarketer can bypass restrictive state rules simply by dialing State A customers from State B, and vice versa.

The FCC also addressed the annoyance of "predictive dialers" -- the machines that dial numbers automatically, whether or not a telemarketer is ready to get on the phone, and often leave the consumer yelling "Hello?" into a vacuum. The new rules now require that 97% of these calls be transferred to a live sales agent within two seconds. In addition, many types of prerecorded messages are prohibited. And telemarketers cannot block caller ID.

Both the FCC and the FTC are enforcing compliance pending resolution of the legal challenges.