



States Drop the Hammer on Telemarketing Calls

Numerous states enacted legislation to spare consumers from that unwanted sales call. Yet with 27 different state laws and Do Not Call directories, will the Feds churn out a similar success with the national law?

TONIGHT'S phone-ringing dinner interruption was brought to you courtesy of the predictive dialer. Friend of the telemarketer, foe to the home diner, the automated device dials, listens and then transfers only live calls to available operators. As a result, salespeople spend more time talking and less time waiting. To the consumer, this efficiency means cold dinners and fewer Saturday mornings spent sleeping late.

With the popularity of predictive dialers increasing in the 1990s, the problem got worse and the public got fed up with unwanted telemarketing calls. As complaints mounted, many states couldn't wait for federal action and

sought legislative and technological remedies to the telemarketing problem. These preemptive measures by individual states undoubtedly curbed the number of unwanted calls to consumers, yet coping with differing state laws has caused

confusion and complication for the national Do Not Call directory.

"The real problem began when these computerized dialers came on the market. The [feds] got the ball rolling, but then got behind it because of the new technology. Through the years [states] have done a better job in consumer protection," says Rex Burlison, chief counsel for the Missouri attorney general.

The Federal Communications Commission (FCC) investigated the viability of instituting a National Do Not

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B Y D A V I D S P A R K

Call Registry in 1991. But the FCC deemed a national registry unfeasible due to cost, manageability and technology constraints. More importantly, the problem had not escalated to the top of the nuisance meter back then. “I think the Do Not Call requirements are a direct response to the predictive dialer problem,” asserts David Torok, the Federal Trade Commission’s program manager for the National Do Not Call Registry.

After the Telecommunications Act passed in 1994, Congress directed the Federal Trade Commission (FTC) to adopt telemarketing rules to address deceptive and abusive telemarketing practices. At this juncture, the FTC required telemarketers to maintain their own Do Not Call lists. This ruling also empowered consumers to ask specific companies to remove their names and numbers from call lists.

But self-policing failed. In January 2002, the FTC proposed a national Do Not Call Registry, which was enacted a year later. One-by-one, however, 27 states passed their own laws to institute statewide Do Not Call lists.

The state of Florida is credited with the first statewide Do Not Call legislation. The primary intent of that law was to protect the elderly from scams. The state of Missouri enforced its statewide No Call list in July 2001, for example. In just over two years, the state collected more than \$1,000,000 in penalties from violators. One unintended benefit: A 50 percent reduction in telephone fraud complaints.

“The problem from our residents came to us quicker and we were able to respond quicker than federal agencies. That’s because we can often get things through our legislature faster than the federal people do,” explains Burlison.

Colorado began collecting phone numbers for its No Call law in May 2002. Enforcement began two months later. Instead of prosecuting to the full extent of the law—\$10,000 per infringement once a pattern of three violations per month is established—Colorado sent out more than 200 cease and desist letters.

Although most businesses complied with Colorado law enforcement, they claimed ignorance of the law. Understandable since the majority of offenders operated out of state. From those businesses that refused to comply,



Rex Burlison, Chief Counsel for the Eastern District of Missouri, champions enhanced consumer protection legislation.

Colorado collected \$37,500 in penalties and pursued legal action in two instances.

“States are appropriate experimental places to try out this kind of regulatory activity,” says Ken Lane, deputy attorney general for the State of Colorado. “Our initial focus was education and awareness.”

Colorado’s education and awareness campaign worked. Complaints averaged 206 per day in July 2002. A year later, complaints dropped to an average of 35 per day.

Confusion and Complications

With individual state efforts underway, dialing consumers has become quite confusing and expensive for nationwide businesses trying to make sales calls. Before dialing, they must purchase directories from each state on a continuing subscription basis. The FTC wants the states to get out of the business of maintaining their individual registries so as not to confuse consumers.

But getting out of the No Call registry business isn’t easy. Legislation in some states, like Colorado, requires the state to maintain a state-owned registry. Privacy

legislation in other states, like Missouri, prevents state officials from sharing registry data with other entities, such as the federal government.

“The states have a pride in ownership,” says the FTC’s Torok. “They like their own systems and want to keep working the same way.”

Financial motivations also come into play. But officials in Colorado and Missouri counter that maintenance of their lists is a break-even or losing proposition.

Torok is convinced that all states will come around in due time. “We’re just approaching it from a policy perspective. It seems to make the best sense for consumers or marketers to have a one-stop shop here.”

Administration of the list should not to be confused with enforcement. States are very proud of their success enforcing their respective No Call laws. No state wants to give that up, and the feds aren’t asking them to.

“We want to preserve our own state law,” says Colorado’s Lane. “The federal law complements the laws of the states that have Do Not Call laws. We don’t want preemption of the state law.”

The FTC asserts that state laws will not be limited by the National Do Not Call Registry, claiming its law is just as stringent as most state laws, while offering additional protection from interstate phone campaigns.

That may be true, but it's still unproven. Some states are not eager to adjust legislation due to concerns about the FCC's and FTC's ability to enforce the national law.

"We have a proven program, and we are concerned about the confusion that consumers may have regarding the federal list as opposed to the state list," Missouri's Burlison says. "We're hesitant to say that the federal list is going to give the kind of protection Missouri consumers have become comfortable with."

That's because there are still discrepancies between the federal and state No Call laws. For example, the federal law says that companies that have established a previous business relationship can continue calling for up to 18 months. Missouri's law limits that call period to six months. Burlison believes the telemarketing industry aggressively took advantage of that 18 month loophole by establishing business relationships before the feds began enforcing the national registry in October 2003. "If the federal law preempts our state law in that area, then consumers have considerably less protection," says Burlison.

"The problem is if consumers start getting phone calls because telemarketers are confused about the federal list, our citizens look to us here in the state to protect them," says Burlison, "So until that federal law is up and running and running successfully, any level of service less than what we've provided is going to come back on us."

What the national registry won't do — prevent political organizations, charitable organizations, and companies conducting surveys from calling you.

Getting "up and running" isn't necessarily a foregone conclusion. At press time, the federal Do Not Call legislation was engaged in a dramatic 11th hour struggle for its life. On Tuesday, Sept 23, 2003, a mere eight days before program's launch, U.S. District Judge Lee West of Oklahoma City ruled that the FTC lacked specific congressional authority to develop and enforce the Do Not Call list. In an almost unprecedented legislative whirlwind, Congress approved in less than 24 hours a measure that would give the agency the authority it needed to launch Do Not Call.

Do Not Call's next obstacle appeared a day later. On Sept. 25, 2003, U.S. District Judge Edward Nottingham of Denver, Colo. ruled the Do Not Call registry unconstitutional and in violation of the

First Amendment. Focusing on Do Not Call's exemptions for certain types of calls like those seeking charitable contributions or political support, Judge Nottingham found that the FTC imposed content-based limitations on what consumers may ban from their homes and "thereby entangled the government in deciding what speech consumers

should hear." The constitutional shortcoming raised by this second ruling may prove far more difficult to resolve than the authority and enforcement issues raised by the first.

Legislative Defense

Although sporadic questions and disagreements linger regarding administration and enforcement of No Call registries, states and feds agree that legislation remains the most effective means for halting unwanted telemarketing calls.

"The No Call law was the final resort," says Colorado's Lane, "I think the law itself is evidence that there aren't any good tips for avoiding telephonic telemarketing—unless maybe you go to a restaurant during dinner hours." ♦

Avoiding Unsolicited Calls: Signing up for Do Not Call lists works well, but it isn't foolproof. Here are a few things to try for the calls that make it through.

Watch what you sign – Sure you'd love to win a new car at the state fair, but read the entry form carefully. Signing it may give them the right to make phone solicitations. If you erred and signed a form, don't worry. If they call, just ask them not to call again and it negates all previous agreements.

Turn off the ringer – Maybe that telemarketer in Boston doesn't realize its three hours earlier in Los Angeles. Unplug your phone or turn

off your ringer Friday and Saturday night to avoid an unexpected weekend wake up call.

Record an outgoing SIT (Special Information Tone) – Don't bother purchasing a Telezapper. Simply call a disconnected number and record the tones. Play it at the beginning of your answering machine's outgoing message and you'll fool most predictive dialers.

Engage the telemarketer – If you

do receive a call that you think is a violation, collect as much information from the telemarketer as you can. Who do they represent? Are they contracted by another company? Provide this information when you issue a complaint.

Pull a Seinfeld – On his show Jerry asked a telemarketer to disclose his home phone number so Jerry could call him back. Try that trick, or say "Hold on a second" and then walk away from the phone.