

January 2005

TELEMARKETING

Implementation of the National Do-Not-Call Registry





Highlights of [GAO-05-113](#), a report to congressional committees

TELEMARKETING

Implementation of the National Do-Not-Call Registry

Why GAO Did This Study

In response to consumer frustration and dissatisfaction with unwanted telemarketing calls, Congress has passed several statutes directing the Federal Trade Commission (FTC) and Federal Communications Commission (FCC) to regulate intrusive and deceptive telemarketing practices, authorizing both agencies to establish the National Do-Not-Call Registry (the national registry), and authorizing FTC to collect fees to fund this national registry. The objective of the national registry is to limit the numbers of unwanted telemarketing calls that registered consumers receive. The Conference Report for the Consolidated Appropriations Act, 2004, mandated that GAO evaluate the implementation of the national registry. Specifically, this report addresses (1) how FTC and FCC have implemented and operated the national registry, (2) fees collected to cover costs to operate the national registry, and (3) how FTC has measured the success of the national registry.

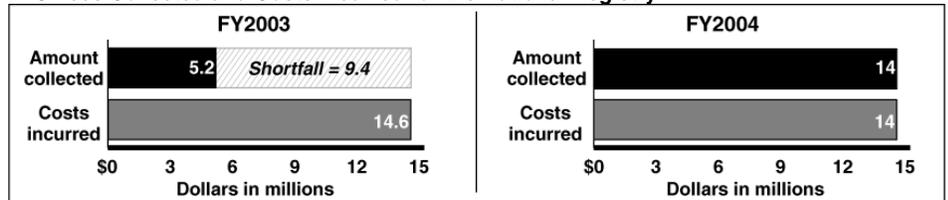
What GAO Found

FTC and FCC have done several things to implement the national registry, including issuing regulations and coordinating with each other on the development of regulations and enforcement efforts. FTC has contracted out management of the operational aspects of the registry.

Fees for the national registry were less than costs incurred in fiscal year 2003 but covered costs in fiscal year 2004, the first full year of operation. Fees collected by FTC in fiscal year 2003 fell short of actual costs incurred by about \$9.4 million. However, fees collected in fiscal year 2004 covered FTC's \$14 million in costs incurred. FTC uses appropriated funds to cover costs associated with the national registry and, as required, reduces its appropriations by the amount of fees collected. FCC uses appropriated funds to cover its costs associated with the national registry.

FTC established three objectives to measure whether the national registry was successful—(1) having the system operational in calendar year 2003, (2) having the system capable of enrolling about 60 million telephone numbers within the first 12 months of operation, and (3) reducing by 80 percent unwanted calls to consumers who sign up for the registry. The national registry was operational in calendar year 2003, and 62 million telephone numbers had been registered by consumers as of June 2004, within 12 months after registration opened. FTC cannot measure how much unwanted calls have been reduced because it does not know how many calls were being received before the establishment of the registry. However, as an alternative, FTC relied upon two surveys. The results of one survey showed that respondents had an 80 percent reduction in unwanted telemarketing calls since registering on the national registry. However, this result is questionable because, among other problems, the survey relied on respondents' recall of the number of telemarketing calls received at least three months prior. The two surveys found that about 90 percent and 87 percent of registered consumers surveyed reported receiving fewer calls. The surveys may provide indications of the national registry's overall performance; however, GAO is uncertain how representative the results are because, for example, one survey did not use a probability sample that can be projected nationwide. FTC and FCC provided informal technical comments to our report, which we incorporated where appropriate. According to FTC, there is no evidence that the national registry is not working.

FTC Fees Collected and Costs Incurred for the National Registry



Source: GAO analysis of FTC data.

www.gao.gov/cgi-bin/getrpt?GAO-05-113.

To view the full product, including the scope and methodology, click on the link above. For more information, contact Paul L. Jones at (202) 512-8777 or jonespl@gao.gov.

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Abbreviations

FCC	Federal Communications Commission
FTC	Federal Trade Commission

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United States Government Accountability Office
Washington, DC 20548

January 28, 2005

The Honorable Thad Cochran
Chairman
The Honorable Robert C. Byrd
Ranking Member
Committee on Appropriations
United States Senate

The Honorable Jerry Lewis
Chairman
The Honorable David R. Obey
Ranking Member
Committee on Appropriations
House of Representatives

The Federal Trade Commission (FTC) and Federal Communications Commission (FCC) have promulgated regulations governing the \$720 billion telemarketing industry pursuant to a number of statutory mandates to regulate telephone solicitations. In response to consumer frustration and dissatisfaction with unwanted telemarketing calls, Congress has passed several statutes directing the FTC and FCC to regulate intrusive and deceptive telemarketing practices, authorizing both agencies to establish the National Do-Not-Call Registry (the national registry), and authorizing the FTC to collect fees to fund the national registry. In general, the national registry is a listing of telephone numbers received from consumers, who registered with the FTC to prevent unwanted telemarketing calls. Telemarketers are required to access the national registry to remove registered consumers from their telephone call lists and violators may be subject to enforcement actions. The objective of this national registry is to limit the number of unwanted telemarketing calls that registered consumers receive.

The Conference Report for the Consolidated Appropriations Act of 2004 directed that we evaluate FTC's and FCC's implementation of the national registry and determine whether FTC has achieved its goal of reducing by 80 percent the number of telemarketing calls received by registered consumers.¹ Accordingly, taking into consideration our consultation with

¹H.R. Conf. Rep. No. 108-401, at 637 (2003).

your staff, this report addresses (1) how FTC and FCC have implemented and operated the national registry, (2) fees collected to cover the costs to operate the registry, and (3) how FTC has measured the success of the national registry, including its assessment of whether telemarketing calls received by registered consumers have been reduced by 80 percent.

To respond to the first objective, we reviewed laws, regulations, and rules related to the national registry and FTC and FCC documents describing the roles and responsibilities of each commission with respect to the implementation, operation, and enforcement of the national registry. We obtained and reviewed FTC's contract with AT&T Government Solutions, which is managing the operational aspects of the national registry database that contains telephone numbers of consumers who have registered and information about alleged violations of the national registry's provisions reported by registered consumers (e.g., consumer complaint data). For the second objective, we reviewed FTC's *Federal Register* notices of proposed rulemaking and final rules to establish the national registry fees and obtained information from FTC about its estimation of the national registry fees to be paid by telemarketers, actual fees collected, and actual costs incurred to implement, operate, and enforce the national registry. To assess the reliability of FTC's cost and fee collection data, we talked with agency staff about data quality control procedures and reviewed relevant documentation. We determined the data were sufficiently reliable for the purposes of this report.

For the third objective, we obtained information on FTC's objectives for assessing the national registry's success. FTC included in its assessment of the national registry's success surveys conducted by two private companies addressing the effectiveness of the national registry. We reviewed these surveys to determine whether they could be used to measure the success of the national registry. We also met with FTC and FCC staff to discuss all three objectives. We conducted our review from April through December 2004 in accordance with generally accepted government auditing standards.

Results in Brief

FTC and FCC initially responded to their statutory mandates by regulating certain telemarketing practices, ranging from limiting the hours when unsolicited calls may be made to prohibiting calls altogether under certain circumstances (i.e., when a consumer had asked the entity not to call), but both commissions ultimately decided to implement the national registry to address continued consumer frustration regarding unwanted telemarketing calls. As directed by statute, FTC and FCC consulted and

coordinated with each other to maximize the consistency of their regulations and enforcement of the national registry. FTC entered into a contract with AT&T Government Solutions to manage the operational aspects of the national registry and a consumer complaint database.

The national registry started accepting consumer telephone number registrations in late June 2003, and telemarketers began accessing the national registry to obtain registered consumer telephone numbers in September 2003. FTC and FCC began enforcing the provisions of the national registry in October 2003—the beginning of fiscal year 2004.

Consumers can register their telephone numbers and file complaints by telephone (1-888-382-1222) or on FTC's Web site (www.donotcall.gov), the latter being the most popular method. Registered consumers can file complaints when they believe a telemarketer has called them in violation of the national registry provisions. FTC's Web site provides guidance to consumers about how to register their telephone numbers and file complaints. Another Web site (www.telemarketing.donotcall.gov) provides guidance to organizations² (hereafter referred to as telemarketers) about how to access the national registry database to obtain the telephone numbers of persons who do not wish to receive telemarketing calls. Telemarketers pay an annual fee³ to subscribe to the registry and are to renew their subscription every 12 months after their initial subscription date. FTC and FCC do not take action on every complaint alleging a violation of the national registry provision; rather they consider a number of factors, such as the number of complaints filed against a telemarketer and the potential that a telemarketer will make

²Organizations that may use the Web site include telemarketers, sellers, service providers, and exempt organizations. Telemarketers include persons, who in connection with telemarketing, initiate or receive telephone calls to or from a customer. Sellers include organizations that, in connection with a telemarketing transaction, provide, offer to provide, or arrange for others to provide goods or services to a consumer. A seller may also be a telemarketer, if it is calling on its own behalf. Or a seller may retain one or more telemarketer(s). Service providers are persons who provide assistance to sellers or telemarketers to engage in telemarketing. Exempt organizations are organizations that are exempt from both FTC's and FCC's requirements to access the national registry, such as charities and political fundraisers, but that voluntarily choose to access the information solely for the purpose of preventing telephone calls to telephone numbers in the national registry.

³FTC defines an "annual period" consisting of 12 months following the first day of the month in which the telemarketer paid the fee. For example, a telemarketer that pays its annual fee on September 15, 2003, has an annual period that runs from September 1, 2003, through August 31, 2004.

future unlawful calls, to determine whether to take action against a telemarketer for violations of the national registry provisions. FTC's enforcement actions usually are accomplished by seeking injunctive relief and sometimes consumer redress in federal court;⁴ actions for civil penalties are generally filed by the Department of Justice on behalf of FTC and are less common. FCC's enforcement efforts are generally accomplished through an administrative process. Both commissions can obtain civil penalties up to \$11,000 per violation.

Fees collected by FTC did not cover all costs to implement, operate, and enforce the national registry in fiscal year 2003. FTC collected about \$5.2 million in fiscal year 2003 and incurred costs of about \$14.6 million—a shortfall of about \$9.4 million. FTC set fees in fiscal year 2003 based on its estimate of the number of telemarketers that would pay to access the national registry, and the average number of area codes that a telemarketer would pay to access. According to FTC, it collected fewer fees than costs incurred for two reasons. First, FTC did not begin collecting fees until September 2003 because its appropriations funding, which provided the total estimated fees that could be collected, was enacted later than anticipated, delaying implementation of the fee collection process. Second, FTC overestimated the number of telemarketers that would pay to access the registry and the average number of area codes that would be accessed. FTC revised its fee, effective September 1, 2004, based on the number of telemarketers that had paid to access the national registry and the average number of area codes accessed. FTC collected about \$14 million in fiscal year 2004 that covered costs incurred of about \$14 million. FTC uses appropriated funds to cover costs to implement, operate, and enforce the national registry and is required to reduce its appropriations by the amount of fees collected. FCC uses appropriated funds to cover costs associated with its enforcement of the national registry.

According to FTC staff, the commission has measured the success of the national registry on the basis of three objectives—(1) having the national registry operational during calendar year 2003 (consumers could register their telephone numbers, telemarketers could access the national registry to obtain telephone numbers, and FTC and FCC could obtain information

⁴Injunctive relief is to prevent or stop violations of law under both the Telemarketing Sales Rule and section 5 of the Federal Trade Commission Act (FTC act), 15 U.S.C. § 45 (2000) and consumer redress is to compensate for any harm to the consumer.

from the national registry for enforcement purposes); (2) having a system that could enroll about 60 million telephone numbers in the national registry within the first 12 months of when consumers began to register; and (3) reducing unwanted calls to consumers who sign up for the national registry, approximating Missouri's experience (some states had previously established their own do not call registries) of reducing by about 80 percent the telemarketing calls to registered consumers.⁵ With respect to its objectives, FTC (1) had the national registry operational in October 2003 and (2) achieved its objective when it reached about 62 million telephone numbers registered in its system within the first 12 months of consumer registration. With respect to reducing unwanted calls, FTC cannot measure how much unwanted calls have been reduced because it does not know how many calls were being received before the establishment of the registry. However, as an alternative, FTC has cited two private survey polls as evidence that the national registry has resulted in a reduction of unwanted telemarketing calls. The results of one survey showed that respondents had an 80 percent reduction in unwanted telephone calls since registering on the national registry. This result is questionable because the survey relied on respondent recall of the number of calls received at least 3 months prior. In addition, one poll found that over 90 percent of registered consumers surveyed reported receiving fewer telemarketing calls, and the other poll found that 87 percent of those who had signed up for the national registry had reported receiving fewer telemarketing calls. The two surveys may provide indications of the national registry's overall performance; however, we are uncertain about how representative the results of each actually are of the opinions and experiences of adults nationwide because, for example, one survey did not use a probability sample that can be projected nationwide, and the other survey had a low response rate, among other things. Notwithstanding these concerns about the surveys' methodologies, the FTC told us that they found no evidence, anecdotal or otherwise, that contradicts the results of the surveys.

Background

The Telephone Consumer Protection Act of 1991 (FCC's basic statutory mandate with respect to telemarketers) required FCC to issue regulations to protect consumers' privacy by preventing unwanted telemarketing calls and authorized, but did not require, FCC to fulfill this requirement by

⁵In the supplementary information to a final rule issued January 29, 2003, FTC noted that Missouri reported a 70 to 80 percent reduction in the number of telephone calls people had received after the implementation of the state registry, based on anecdotal information.

creating a national do-not-call database.⁶ The Telemarketing and Consumer Fraud and Abuse Prevention Act of 1994 (FTC's specific statutory mandate regarding telemarketing) required FTC to issue rules prohibiting deceptive telemarketing acts or practices and other abusive telemarketing acts or practices⁷ but did not specifically mention a national registry.⁸ Both commissions have promulgated regulations imposing requirements on telemarketing practices, ranging from restrictions on the hours when unsolicited calls may be made to provisions prohibiting calls under certain circumstances. FTC's regulations are known as the Telemarketing Sales Rule,⁹ and FCC's as the Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991.¹⁰

The two commissions have different but overlapping jurisdiction over the activities of entities that make telemarketing calls: thus, telemarketers may have to comply with one or both sets of regulations. FCC's authority covers entities that use the telephone to advertise, including those making intrastate telephone solicitations, while FTC's authority under its telemarketing law is limited to entities engaged in interstate telemarketing. In addition, by statute, certain entities are wholly or partially exempt from FTC jurisdiction but remain subject to FCC jurisdiction. These include common carriers,¹¹ banks, credit unions, savings and loan institutions, airlines, nonprofit organizations, and insurance companies.

FTC and FCC initially responded to the statutory mandate to address unwanted telemarketing by prohibiting calls to individuals who previously had stated to telemarketers that they did not wish to receive calls made by

⁶Pub. L. No. 102-243, § 3(a), 105 Stat. 2394, 2396-97 (1991) (codified at 47 U.S.C. § 227(c)).

⁷Pub. L. No. 103-297, § 3(a)-(c), 108 Stat. 1545, 1546 (1994) (codified at 15 U.S.C. § 6102(a)-(c)).

⁸Several lawsuits challenged both the constitutionality of the national registry and FTC's authority to establish it and one court enjoined FTC from implementing the registry. On October 7, 2003, the court of appeals stayed the injunction pending FTC's appeal and the court's review. *FTC v. Mainstream Marketing Services, Inc.*, 345 F.3d 850 (10th Cir. 2003). The decisions against the national registry were overturned on appeal early in 2004. *Mainstream Marketing Services, Inc., v. FTC*, 358 F.3d 1228 (10th Cir. 2004), *cert. denied*, 125 S.Ct. 47 (2004).

⁹6 C.F.R. pt. 310 (2004).

¹⁰47 C.F.R. § 64.1200 (2004).

¹¹In a telecommunications context, a common carrier is a telecommunications company that holds itself out to the public for hire to provide communications transmission services.

or on behalf of a particular seller. These regulatory provisions are called “entity-specific” do-not-call provisions, and they remain in effect as a complement to the national registry.¹² Telemarketers are required to maintain lists of consumers who have specifically requested to have their names placed on the company-specific do-not-call list, and it is a violation of law for them to call a consumer who has asked to be placed on the company’s list. Thus, those consumers who have not placed their telephone numbers on the national registry still can instruct telemarketers to place them on an entity-specific do-not-call list. In addition to FTC’s and FCC’s entity-specific do-not-call provisions, consumers can register their telephone numbers on state do-not-call lists. FCC stated in a July 2003 Report and Order that 36 states had established their own statewide do-not-call lists to respond to the growing consumer frustration with unsolicited telemarketing calls.¹³

Entering one’s telephone number on the national registry will not stop all unwanted solicitations. There are several exemptions in the law that allow organizations to call consumers, even if their telephone numbers are on the national registry. Exempt organizations include charities, organizations conducting surveys, political fundraisers, those calling on behalf of tax exempt organizations, and those calling under an “established business relationship” or with the consumer’s written permission. Under an established business relationship, a telemarketer can call a consumer for a period of up to 18 months after the consumer’s last purchase or financial transaction with the business or up to 3 months after the consumer’s last inquiry or application to the business. However, even if a business relationship was established, the company is required to

¹²The original entity-specific program did not apply to calls made by or on behalf of charitable organizations—FTC’s statute addressed only calls “to induce purchases of goods or services,” and FCC’s statute exempted calls by tax-exempt nonprofits (which FCC extended to calls by or on behalf of tax-exempt nonprofits when it set up the program). The definition of telemarketing in FTC’s statute was subsequently amended to cover charitable solicitations. In response, FTC decided to expand its entity-specific program to cover charitable calls by for-profit telemarketers hired by charities to solicit donations. It was not able to cover calls made directly by charities because the amendment to cover charitable calls did not alter the telemarketing law’s reliance on the FTC act’s jurisdictional limitations as to nonprofit organizations.

¹³The 36 states, identified in supplementary information to FCC’s July 2003 regulations for the national registry are Alabama, Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Florida, Georgia, Idaho, Illinois, Indiana, Kansas, Kentucky, Louisiana, Maine, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, New Jersey, New Mexico, New York, North Dakota, Oklahoma, Oregon, Pennsylvania, South Dakota, Tennessee, Texas, Utah, Vermont, Wisconsin, and Wyoming.

comply with a request under the previously mentioned entity-specific do-not-call provision. Thus, if the consumer tells the company they do not want to be solicited by telephone, the company is prohibited from calling again. Similarly, the consumer can use the entity-specific option to ask a paid fundraiser for a charitable organization to stop soliciting them for a specific charity by telephone.¹⁴

Implementation and Operation of the National Registry

On the basis of its experience and growing evidence that the entity-specific provisions were ineffective and overly burdensome on consumers, in January 2002, FTC proposed a national do-not-call registry and 1 year later adopted its proposal to amend its Telemarketing Sales Rule to create the national registry and prohibit telemarketing calls to consumers who registered their telephone numbers. FTC also allowed states to transfer to the national registry those consumer telephone numbers on their state registries. As of December 2004, 17 states have transferred their state list and adopted the national registry as the state registry.¹⁵

FCC revised its regulations pursuant to the Telephone Consumer Protection Act, in June 2003, to require telemarketers under its jurisdiction to comply with the requirements of the national registry. In addition, in accordance with the Telephone Consumer Protection Act, FCC required states with their own state registries to include on the state registry those telephone numbers registered on the national registry from their respective states. FCC required this to reduce the potential for consumer confusion and reduce regulatory burdens on the telemarketing industry. FCC allowed an 18-month transition period for states to download information from the national registry to their state registry.

In March 2003, Congress passed the Do-Not-Call Implementation Act (the Implementation Act), which authorized FTC to establish fees “sufficient to implement and enforce” the national registry.¹⁶ Initial registration of

¹⁴However, only paid fundraisers subject to FTC jurisdiction are required to abide by the request, because FCC exempted such businesses from its entity-specific do-not-call provision while FTC expanded its entity-specific provision to cover such businesses in response to a 2001 statutory amendment.

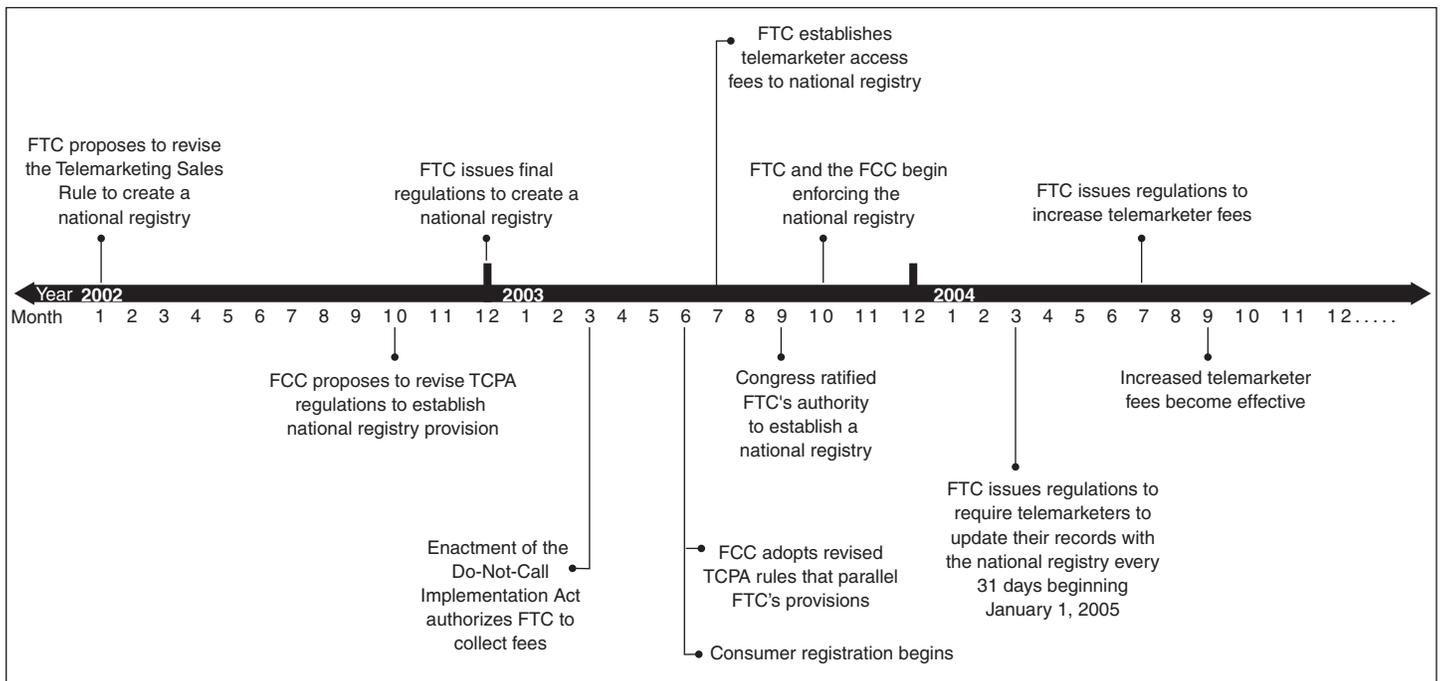
¹⁵The 17 states (identified by FTC) are Alabama, Arkansas, California, Colorado, Connecticut, Florida, Georgia, Idaho, Kansas, Kentucky, Maine, Massachusetts, Minnesota, New York, North Dakota, Oklahoma, and Pennsylvania. According to FTC, eight states do not now share their registries with the FTC—Indiana, Louisiana, Mississippi, Missouri, Tennessee, Texas, Wisconsin, and Wyoming. FTC staff said they continue to work with the states to coordinate the registries with the National Do-Not-Call Registry.

¹⁶Pub. L. No. 108-10, § 2, 117 Stat. 557, 557 (2003).

consumer telephone numbers began in late June 2003. In July 2003, FTC set fees to be paid by telemarketers to access the national registry. In September 2003, in response to legal challenges to the national registry and requirements, Congress passed additional legislation expressly authorizing FTC to implement and enforce a national do-not-call registry under the Telemarketing and Consumer Fraud and Abuse Prevention Act and ratifying the National Do-Not-Call Registry regulation as promulgated by FTC in 2002.¹⁷ To manage the anticipated large number of consumers who would want to register via the telephone, FTC had a two-stage process whereby consumers west of the Mississippi could register by telephone starting June 27, 2003, and on July 7, 2003, telephone registration was opened to the rest of the country. FTC and FCC began enforcement of the national registry on October 1, 2003; and FTC issued a revised rule to increase telemarketer fees in July 2004. Figure 1 provides a timeline of FTC and FCC actions to implement the national registry.

¹⁷Pub. L. No. 108-82, 117 Stat. 1006 (2003). The United States Court of Appeals for the 10th Circuit also ruled that, on the basis of FTC's existing statutory responsibilities prior to the September 2003 legislation, FTC had the authority to create the national registry. *Mainstream Marketing Services, Inc., v. FTC*, 358 F.3d 1228 (10th Cir. 2004), *cert. denied*, 125 S.Ct. 47 (2004).

Figure 1: Timeline of FTC and FCC Actions to Implement the National Registry



Source: GAO analysis of FTC data.

Under the Implementation Act, FTC and FCC were to consult and coordinate with each other to maximize consistency between their regulations governing the national registry. The Implementation Act required both FTC and FCC to provide a written report to Congress 45 days after FCC finalized its rulemaking on the national registry. Each commission's report was to cover their efforts to maximize consistency in their enforcement efforts by (1) conducting an analysis of the telemarketing rules implemented by both commissions, (2) listing any inconsistencies between the two commissions and the effects of such inconsistencies on consumers and on telemarketers paying for access, and (3) providing proposals to remedy any inconsistencies. FTC and FCC issued reports in September 2003 that analyzed differences related to enforcement of the national registry and other areas where they had

common enforcement interests related to solicitations by telemarketers, such as abandoned calls and calling time restrictions.¹⁸

As shown in table 1, differences related specifically to the national registry that FTC and FCC identified in their reports included (1) jurisdiction, (2) definition of established business relationship, (3) instances where the telemarketer caller had a personal relationship with a consumer, and (4) instances where tax-exempt nonprofit entities use for-profit telemarketers to solicit on their behalf. FTC and FCC consulted and coordinated to address the inconsistencies that they identified. For example, since FCC's jurisdiction is broader than FTC's, FCC decided to focus its enforcement efforts on activities over which FTC does not have jurisdiction, such as common carrier and intrastate telemarketing. In other cases, the two agencies proposed monitoring the impact of the inconsistencies to determine whether any action was needed. Table 1 summarizes FTC's and FCC's inconsistencies with respect to the national registry and decisions made to address the differences.

¹⁸“Call abandonment” occurs when a consumer answers the telephone, only to find no one on the line. This happens because telemarketers use automatic equipment to increase their efficiency and sometimes results in no sales representative on the telephone when the consumer answers the calls. “Calling time restrictions” refers to hours of the day that telemarketers are allowed to make telephone solicitations.

Table 1: FTC and FCC Identified Inconsistencies Related to the National Registry Enforcement

FTC	FCC	FTC and/or FCC remedy
FTC's jurisdiction is narrower than FCC's in that it excludes purely intrastate telemarketing campaigns and calls involving certain industries.	FCC's jurisdiction is broader in that it includes the types of business activities exempt from FTC jurisdiction and both interstate and intrastate activities.	FCC will focus its enforcement efforts on entities such as common carriers and intrastate activities.
FTC defines an established business relationship on the basis of either (1) a consumer's purchase, rental, or lease of a seller's goods or services or a financial transaction between the consumer and the seller; or (2) the consumer's inquiry or application regarding a product or service.	FCC defines established business relationship as a voluntary two-way communication between a person or entity and a consumer based on the consumer's purchase or transaction with the entity or on the consumer's inquiry or application regarding the entity's products or services, regardless of whether any payment was involved.	FTC reported that the commissions would monitor whether telemarketers take advantage of the potentially broader FCC exemption for an established business relationship and whether consumers reported receiving more unwanted telemarketing calls as a result. If this occurs, the two Commissions are to work together to reconcile the different requirements.
FTC does not make exceptions for telemarketing calls to persons known personally by the telemarketer.	FCC makes an exception for telemarketing calls to persons known by the telemarketer caller (e.g., family member or friend).	FTC reported that it would monitor instances where this might occur to determine whether it needs to modify its enforcement of this provision.
FTC requires for-profit telemarketers making interstate telephone solicitations on behalf of tax-exempt nonprofit entities to comply with the entity-specific do-not-call provisions but not with the provisions of the national registry.	FCC rules exempt such entities from its entity-specific do-not-call provisions and from the national registry provisions.	FCC reported that the commissions would work together to remedy the inconsistency.

Source: FTC and FCC September 8, 2003, reports to Congress on regulatory coordination.

In addition to the above, FTC noted minor differences related to monitoring and enforcement with respect to safe harbor provisions and differences regarding entities that can be held liable for violations.¹⁹ FTC did not believe differences for these two issues were significant enough to warrant any action, and FCC had not identified these as inconsistencies in its report.

FTC and FCC entered into a Memorandum of Understanding that further established both commissions' intent to work together in a cooperative and coordinated fashion to implement consistent, comprehensive, efficient, and nonredundant enforcement of federal telemarketing statutes and rules. FTC and FCC agreed that (1) the commissions would meet at

¹⁹Safe harbor provisions protect a telemarketer from liability when a violation of the national registry is made in error, and the telemarketer can demonstrate compliance with each of several provisions of the national registry.

least quarterly to discuss matters of mutual interest; (2) FTC would provide FCC with national registry information through the Consumer Sentinel system;²⁰ (3) the commissions would make available to each other consumer complaints regarding possible violations of federal telemarketing rules; (4) the commissions would endeavor to avoid unnecessarily duplicative enforcement actions; (5) the commissions would engage in joint enforcement actions, when necessary, that are appropriate and consistent with their respective jurisdictions; (6) the commissions would coordinate public statements on joint cases; and (7) the Memorandum of Understanding was to remain in effect until modified by mutual consent of both parties or terminated by either party upon 30 days advance written notice. FTC and FCC staff said that they tend to meet more frequently than quarterly to discuss matters of mutual interest.

Operation of the National Registry

FTC's December 2002 regulation establishing the national registry set forth a process for consumers to register their telephone numbers and for telemarketers to obtain these numbers to remove them from their call lists. Consumers who want to place their telephone number(s) on the national registry can register either on FTC's Web site (www.donotcall.gov) or by telephone (1-888-382-1222). A consumer can enter up to three telephone numbers at one time by registering online. The consumer must also enter their e-mail address, which is used for confirmation and completion of the registration process. Consumers are to receive an e-mail of the Web site registration, which they must respond to within 72 hours in order to confirm registration. To register a number by telephone, a consumer must call the national registry from the telephone he or she wants to register. The consumer's telephone number is confirmed at the time the call is made, and registration is completed at that time. A registered telephone number remains on the national registry for 5 years before expiration at which time the consumer may re-register it. A consumer can use FTC's national registry Web site or toll free number to verify the registration's expiration date. According to FTC, of the approximately 62 million registered consumer telephone numbers as of August 2004, 61 percent registered on FTC's Web site, 22 percent registered using the toll-free telephone number, and 17 percent came from state downloads.

²⁰ Consumer Sentinel is an FTC law enforcement resource that contains a database of more than 1 million consumer complaints, as well as litigation resources and guides. It is accessible to more than 1,000 law enforcement agencies. Consumer Sentinel contains complaints on consumer fraud, identity theft, and national registry violations.

FTC entered into a contract, dated March 1, 2003, with AT&T Government Solutions to provide services necessary to develop, implement, and operate the national registry. The contract provided that the contractor was to develop and provide a secure database that included the telephone numbers collected from consumers during the registration process as well as receive telephone numbers from states that decided to include consumer telephone numbers from their do-not-call registries in the national registry. The database was also to include information on the date the registration was made and the expiration date of the registration. The automated database was to, among other things, permit consumers to confirm or alter their registration; provide reports and access to information regarding registration to FTC personnel; provide a system to allow telemarketers to access consumer telephone numbers and pay fees, when required; provide for a system to gather consumer complaint information concerning alleged violations of the national registry; provide a system that transferred all valid processed consumer complaints to the FTC in a format that would be compatible with the FTC's Consumer Sentinel system; and allow appropriate federal, state, and other law enforcement personnel access to consumer registration and telemarketer information maintained in the national registry.

Until December 31, 2004, covered telemarketers are to access the national registry within 3 months of making a call to drop from their call lists the telephone numbers of consumers who have registered. However, Congress directed FTC to amend its regulation to require telemarketers to access information at least once a month.²¹ FTC issued a notice of proposed rulemaking February 13, 2004, and a final rule on March 29, 2004, to require, effective January 1, 2005, that telemarketers must obtain national registry telephone numbers and purge registered telephone numbers from their call lists at least every 31 days. In promulgating the final rule, FTC explained that 31 days was used to define the statutory monthly requirement in order to provide a set interval at which telemarketers must access the telephone numbers in the national registry. An interval of 31 days rather than 30 days was used to mirror the length of the most frequently occurring and longest month. The FCC rule was also amended to require that telemarketers download the registry every 31 days. FTC also explained in promulgating the final rule that it had set the effective date as January 2005 to allow businesses 9 months to ready their systems and procedures and to enable FTC and its contractor sufficient time to

²¹Consolidated Appropriations Act, 2004, Pub. L. No. 108-199, div. B, tit. V, 118 Stat. 3, 89.

implement necessary changes to the national registry system to accommodate the increased usage.

FTC and FCC have mechanisms in place to handle consumer complaints. Both commissions provide numerous ways for consumers to file complaints. These include by mail, over the telephone, by facsimile, by e-mail directly to the agency and through their Web sites for the national registry. In filing a complaint, both FTC and FCC require that the consumer have been on the national registry for 3 months, but differ in the information consumers are to provide. For example, FTC requires consumers to provide their telephone number, the company name or telephone number, and the date of the violation. FCC requires consumers to provide their name and telephone number, the telemarketer's name or telephone number, any specific information about the complaint, and the date of the violation.

According to FTC and FCC, the requirement that consumers have been on the national registry for 3 months will be revised to 31 days on January 1, 2005, when telemarketers are required to remove registered telephone numbers from their call lists every 31 days. As of December 11, 2004, consumers had filed 557,727 complaints through the national registry's Web site and 117,610 complaints via the telephone. According to FCC staff, FCC has established a process for handling complaints against common carriers²² that differs from those used for noncommon carriers.²³ Under this process, FCC serves a common carrier with a notice of complaint that includes a copy of the complaint and a specified time in which to respond. With respect to noncommon carriers, FCC and FTC may initiate an investigation of the complaint depending on the number of complaints they have received against the company and other factors.

FTC and FCC do not take action on all consumer complaints. Rather, FTC and FCC said that they consider a number of factors when determining which alleged violations to pursue that include the type of violation alleged, the nature and amount of harm to consumers (e.g. invasion of privacy or financial harm), the potential that telemarketers will make future unlawful calls, and securing meaningful relief for affected

²²See 47 C.F.R. §§ 1.716-1.718 (2003).

²³Noncommon carrier entities subject to FCC enforcement include companies engaged in the business of banking, credit unions, savings and loans, airlines, and companies engaging in the business of insurance.

consumers. FTC's enforcement actions generally are accomplished by seeking injunctive relief and sometimes consumer redress in federal court; actions for civil penalties (up to \$11,000 per violation) are filed by the Department of Justice on behalf of FTC and are less common.²⁴ FCC's enforcement efforts are generally accomplished through an administrative process whereby FCC first issues citations against entities not otherwise regulated by FCC for violations of laws it enforces. For subsequent violations by such entities, or for initial violations by FCC regulated entities (such as common carriers, broadcasters, or other licensees), FCC may impose a civil penalty through forfeiture proceedings or take additional enforcement actions that include, for example, cease and desist proceedings, injunctions, and revocation of common carrier license operating authority for violations of the requirements of the national registry.²⁵ Enforcement of a forfeiture order is done in federal court through the Department of Justice, which handles violations of statutes that FCC enforces.²⁶ Fines collected through civil penalties go to the U.S. Treasury's general fund and are not retained in either commission's accounts for their use.²⁷

As of December 2004, FTC filed 9 lawsuits for injunctive relief, and in some cases, consumer redress, and the Department of Justice had filed one lawsuit on behalf of FTC for violations of the national registry. As of December 2004, FCC reported that it had initiated 99 investigations against companies that allegedly made calls to consumers on the national registry.

²⁴FTC can seek civil penalties on its own when the Department of Justice fails to bring suit within 45 days of FTC having forwarded the case for filing and litigation. 15 U.S.C. §56 (2000).

²⁵Forfeiture proceedings are administrative proceedings to determine the appropriate monetary penalty for repeated or willful violations. They must follow a violation of a previously issued citation, unless the violator holds an FCC license or other authorization, in which case no warning is necessary before a forfeiture is proposed. They involve notice and an opportunity to respond before issuance of a forfeiture order requiring payment of a civil penalty. *See* 47 U.S.C. §§ 503(b) (2001); 47 C.F.R. § 1.80 (2003). Cease and desist proceedings generally involve an order to show cause why an order to cease and desist from violating any FCC rule or regulation should not be issued. After a hearing or waiver of the hearing, FCC may decide to issue the cease and desist order, and the order may be appealed to the U.S. Court of Appeals for the District of Columbia. *See* 47 U.S.C. §§ 312(b)-(c), 402(b) (2001). An injunction requiring compliance with an FCC order may be issued by a federal court upon application by the FCC or the U.S. Department of Justice for enforcement of the order. *See* 47 U.S.C. § 401(b) (2001).

²⁶47 U.S.C. §§ 504(a), 401(c) (2001).

²⁷47 U.S.C. § 504(a) (2001); 31 U.S.C. §3302(b) (2001).

FCC's investigations have resulted in 16 citations for violations of the national registry. In addition, 2 companies have entered into consent decree settlements²⁸ involving substantial voluntary monetary payments and implementation of strict compliance plans, 54 investigations have been closed because the calls underlying the complaints were not legally actionable, and the remaining 27 investigations are under active consideration. In some instances, consumers had an established business relationship but did not realize it. Also, as mentioned earlier, FTC and FCC have various factors they consider with respect to which complaints to pursue; therefore, not all complaints are investigated. Appendix I provides more information on FTC's ten lawsuits, and FCC's 16 citations and 2 consent decrees related to enforcement of the national registry provisions.²⁹

Fees Collected for the National Registry Did Not Cover Costs in Fiscal Year 2003 But Did in Fiscal Year 2004

FTC collected about \$5.2 million in fees in fiscal year 2003 and incurred costs of about \$14.6 million to implement, operate, and enforce the national registry. This is a shortfall of about \$9.4 million. In fiscal year 2004, FTC collected about \$14 million in fees and incurred costs of about \$14 million to implement, operate, and enforce the national registry. FTC attributed the FY 2003 shortfall in fees to unexpectedly short partial year operations (less than one month) and to fees being set too low due to lack of information about (1) the number of telemarketers that would pay to access the registry and (2) the average number of area codes that telemarketers would access.³⁰ FTC revised the national registry access fee effective September 1, 2004, using information on the number of telemarketers that had actually paid to access the registry in fiscal year 2003 and the number of average area codes accessed. FTC uses funds

²⁸FCC officials told us that unlike consent decrees at other agencies, FCC's consent decree process doesn't involve adoption by court order. In this context, a consent decree settlement is a written agreement between FCC and the party under investigation that is adopted by FCC order. *See* 47 C.F.R §1.93. Such a settlement may be reached in the context of ongoing FCC administrative proceedings, such as forfeiture or cease and desist proceedings. *See id.* §1.94. Any violation of such a consent decree is considered a violation of an FCC order and can subject the party to the sanctions associated with such a violation. *See id.* §1.95.

²⁹FTC and FCC have taken additional enforcement actions against telemarketers under each agency's telemarketing statutes. The 10 lawsuits, 16 citations, and 2 consent decrees reflect enforcement actions specific to the national registry.

³⁰According to FTC staff, the short operations period in fiscal year 2003, which affected the fees collected, also had continuing effects into fiscal year 2004.

from its salaries and expenses account to cover costs of implementing, operating, and enforcing the national registry and is required to reduce its general fund appropriations by the amount of fees collected. In fiscal years 2003 and 2004, appropriations estimates of fees to be collected for the national registry (\$18.1 million and \$23.1 million, respectively) were greater than the actual amount of fees collected and costs incurred.³¹ Because the estimates were greater than the actual amounts of fees collected by the national registry, the differences represented funds available for other allowable expenses covered by the salaries and expenses appropriation.³² FCC's costs associated with its enforcement of the national registry are funded in its salaries and expenses account. According to FCC staff, FCC does not distinguish costs associated with enforcing the national registry from its other enforcement efforts.

In 2003 when FTC initiated its fee structure, it based the fee for the national registry on the number of entities that would be required to pay the fee and the number of area codes that a telemarketer would access annually. FTC estimated that \$18 million would be needed to implement, operate, and enforce the national registry requirements. In two separate notices of proposed rule making for the original national registry fee, FTC stated that it made a number of assumptions to estimate the number of entities that would be required to pay and the number of areas codes to be accessed. Because of an absence of information available about the number of companies then in the marketplace that made telemarketing calls to consumers covered by national registry regulations, FTC sought public comment on its assumptions and methodology but received virtually no comments. Consequently, FTC estimated the fee based on those assumptions and estimates and noted that the fees might need to be reexamined periodically and adjusted to reflect actual experience with operating the registry. FTC's original fee rule established an annual fee of \$25 for each area code requested from the national registry, up to a

³¹The estimates were closer to FTC's actual costs for implementing and enforcing all of the provisions of its telemarketing regulations (the Telemarketing Sales Rule), which were \$20.1 million for fiscal year 2003 and \$21.2 million for fiscal year 2004. While the Do-Not-Call Implementation Act authorizes the FTC to establish only fees "sufficient to implement and enforce the provisions relating to the 'do-not-call' registry of the Telemarketing Sales Rule," it provides that fees actually collected are available "to offset the costs of activities and services related to the implementation and enforcement of the Telemarketing Sales Rule, and other activities resulting from such implementation and enforcement." Pub. L. No. 108-10, 117 Stat. 557, 557 (2003).

³²GAO, *Federal User Fees: Budgetary Treatment, Status, and Emerging Management Issues*, GAO/AIMD-98-11 (Washington, D.C.: Dec. 19, 1997), 18.

maximum of \$7,375 (300 area codes or more). The first 5 area codes are provided at no cost. FTC provided for free access to the first 5 area codes to limit the burden that might be placed on small businesses that only require access to a small portion of the national registry. FTC's rule also permits exempt organizations to have free access to the national registry with the intent that should the exempt organizations want to purge their calling lists as a matter of customer service, they would be able to obtain the information necessary to do so. Once a telemarketer paid for access to a selected number of area codes, or was granted free access, it could access those area codes as often as it deemed appropriate for the annual period covered. If, during the course of the annual period, a telemarketer needed to access telephone numbers from more area codes than those initially selected, it would be required to pay for access to those additional area codes. For purposes of additional payments, the annual period was divided into two periods of 6 months each. Obtaining additional area codes for the first 6-month period required a payment of the full year fee of \$25 for each new area code whereas for new area codes to be used for the second 6-month period, telemarketers would be assessed a reduced \$15 fee for each area code. Table 2 shows FTC's estimation of the national registry fee to raise approximately \$18 million in fiscal year 2003.

Table 2: FTC's Estimation of National Registry Fee to Raise about \$18 million to Cover Estimated Costs to Implement, Operate, and Enforce the National Registry in Fiscal Year 2003

Average number of area codes accessed	73
Multiplied by cost per area code	\$25
Average amount of fees to be collected per entity	\$1,825
Multiplied by estimated number of entities accessing database	10,000
Estimated total amount to be collected in fees	\$18,250,000

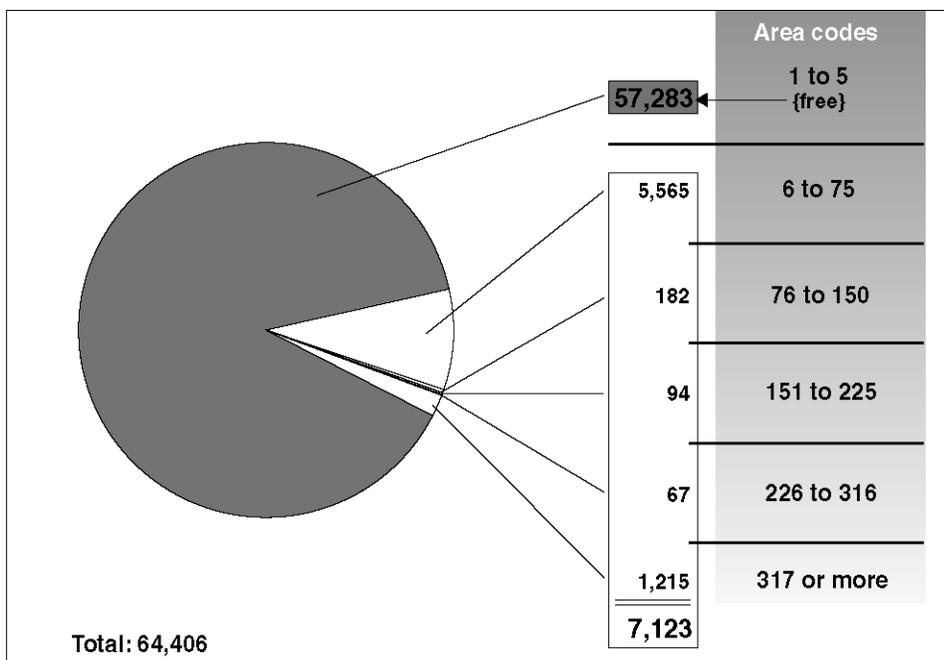
Source: *Federal Register* dated July 31, 2003.

Note: *Federal Register* Vol. 68. No. 147, (dated July 31, 2003), pg. 45141.

According to FTC, it collected about \$5.2 million in fiscal year 2003. FTC said it collected fewer fees than anticipated for two reasons. First, FTC did not begin collecting fees until September 2003 because its appropriations funding, which provided the total estimated fees that could be collected, was enacted later than anticipated, delaying implementation of the fee collection process. Second, the number of telemarketers that accessed the national registry and the average number of area codes that they accessed were smaller than FTC estimated. FTC estimated that 10,000 companies would pay for the national registry data and that, on average,

telemarketers would access 73 area codes. In June 2004, FTC used information from the national registry to reexamine its estimates for setting the fee. As figure 2 shows, about 7,100 companies had paid for access to the national registry as of June 2004. The average number of area codes accessed was 63.

Figure 2: Number of Telemarketers Who Accessed the National Registry, as of June 1, 2004



Free
Pay

Source: GAO analysis of FTC data.

FTC published a revised fee rule for the national registry on July 30, 2004. The revised final fee rule established the fee for each area code to be \$40 per year, with the first 5 area codes provided to each telemarketer at no charge. Exempt organizations would continue to be allowed access to the national registry at no charge. The maximum amount that would be charged any single telemarketer would be \$11,000, which would be

charged to any telemarketer accessing 280 or more area codes.³³ The reduced fee charged to telemarketers requesting access to additional area codes during the second 6 months of the semiannual period would be \$20. The fee was based on the number of telemarketers that had accessed the national registry as of June 1, 2004, the actual average number of area codes accessed, and FTC's estimate that \$18 million would be needed to cover estimated costs associated with the national registry in fiscal year 2004.³⁴ Table 3 shows FTC's estimation for the national registry fee to raise approximately \$18 million in fiscal year 2004. In fiscal year 2004, FTC collected about \$14 million in fees.

Table 3: FTC's Estimation of National Registry Fee to Raise About \$18 Million to Cover Estimated Costs to Implement, Operate, and Enforce the National Registry in Fiscal Year 2004

Average number of area codes accessed	63
Multiplied by cost per area code	\$40
Average amount of fees to be collected per entity	\$2,520
Multiplied by estimated number of entities accessing database	7,100
Estimated total amount to be collected in fees	\$17,892,000

Source: FTC.

Funds collected through the national registry fees are to cover FTC costs related to the implementation, operation, and enforcement of the national registry. In its original fee rule dated July 31, 2003, FTC identified its costs as falling into three broad categories.³⁵ First are the actual contract costs along with associated agency costs to develop and operate the national registry. The second category of costs relates generally to enforcement efforts. The third category of costs covers FTC infrastructure and administration costs, including information technology structural supports. Table 4 summarizes the costs incurred for the three broad categories plus overhead costs for fiscal years 2003 and 2004, as reported

³³The final rule for the fee structure reduced the maximum number of area codes for which an entity would be charged from 300 to 280 to more closely correlate the charges with the number of active area codes in the country.

³⁴While FTC estimated that \$18 million would be needed to cover costs associated with the national registry in fiscal years 2003 and 2004, FTC said that estimates of the annual costs associated with operating the national registry may vary from fiscal year to fiscal year.

³⁵*Federal Register* Vol. 68, No. 147, pg. 45141.

by FTC. As shown in the table 4, FTC incurred costs of about \$15 million in fiscal year 2003 and about \$14 million in fiscal year 2004.

Table 4: FTC's Costs Related to the National Registry for Fiscal Years 2003 and 2004

Cost category	Cost for fiscal year 2003	Cost for fiscal year 2004
Contract	\$4,332,338	\$4,339,200
Enforcement	\$3,449,715	\$7,282,188
Infrastructure and overhead	\$12,375,012	\$9,432,276
Total	\$20,157,065	\$21,053,664
Minus costs associated with other telemarketing sales rule efforts	\$5,550,815	\$7,077,409
Net total costs for national registry	\$14,606,250	\$13,976,255

Source: FTC.

FTC Reported Three Objectives to Measure Whether the National Registry Was Successful

According to FTC staff, the commission had three objectives to measure whether the national registry was successful. These were to (1) have the system up and running during calendar year 2003, (2) to ensure that the system could enroll about 60 million telephone numbers in the national registry in the first year of operation, and (3) reduce unwanted calls to consumers who sign up for the national registry, approximating Missouri's experience of reducing telemarketing calls by about 80 percent.

The national registry was up and running in calendar year 2003. Performance goals were contained in FTC's contract with AT&T Government Solutions to develop and maintain the national registry. The contractor was responsible for, among other things, consumer registration, telemarketer access to the registry, law enforcement access to the registry, and collecting consumer complaint information concerning violations of the national registry provisions. The contract contained specific performance measurements for completing various tasks associated with the national registry. FTC considered the national registry to be fully operational October 2003 when both commissions began enforcing national registry provisions.

FTC also reached its expectation based on states' experience to enroll 60 million telephone numbers in the national registry in the first year of operation. FTC began receiving consumer registration of telephone

numbers in June 2003, and, as of June 2004, 62 million telephone numbers had been registered on the national registry.

On the basis of the experience of certain states with do-not-call registry laws, FTC anticipated that consumers who entered their telephone numbers in the national registry would experience as much as an 80 percent reduction in unsolicited telemarketing calls. However, measuring the actual reduction in telemarketing calls is not possible because baseline data on the volume of telemarketing calls consumers received prior to the national registry's implementation are not available to make a comparison and determine what change has occurred in calls received. As an alternative, FTC has cited polls taken by Harris Interactive® and the Customer Care Alliance as evidence that the national registry has resulted in a reduction of unwanted telemarketing calls. Specifically, in January 2004, Harris Interactive® found that about 90 percent of those who signed up for the national registry had fewer telemarketing calls, and 25 percent of those registered indicated they had received no telemarketing calls since signing up.³⁶ In June 2004, a Customer Care Alliance telephone survey reported that 87 percent of those who had signed up for the national registry had received fewer telemarketing calls.³⁷ This survey also attempted to quantify changes in the volume of unsolicited calls registered consumers had received since signing up, reporting an 80 percent reduction; however, we have concerns about how this was done and the accuracy of the results. The two surveys may provide indications of the national registry's overall performance; however, we are uncertain about how representative the results of each actually are of the opinions and experiences of adults nationwide because, for example, the Harris survey did not use a probability sample that can be projected nationwide and the Customer Care survey had a low response rate, among other things. Notwithstanding these concerns about the surveys' methodologies and implementation problems, the FTC told us that they found no evidence, anecdotal or otherwise, that contradicts the results of the surveys. Furthermore, FTC considers the surveys' results to have found that most people know about the national registry and that most people who say

³⁶Harris Interactive® conducted an on-line poll within the United States between January 19 and 28, 2004, among 3,378 adults nationwide.

³⁷Customer Care Alliance is a consortium of companies that provides, among other things, services for clients to assess consumer satisfaction with their products. The company conducted its national registry telephone survey of 851 people from February through April 2004.

they have a telephone number on the national registry say they are getting fewer calls, creating some confidence that the results are generally correct. See appendix II for a more detailed discussion of the two surveys.

FTC staff said that complaints filed also provide an alternative measure of the success of the national registry. As of December 11, 2004, 675,337 complaints had been filed since FTC and FCC began accepting complaints in October 2003. FTC staff noted that as a percentage of the total number of telephone numbers registered, this is about 1 percent and is indicative of the success of the national registry. While the number of complaints may be an indication of the national registry's success, few complaints could also be the result of consumer complacency or reluctance to take the time to file a complaint.

The Implementation Act required FTC and FCC to each provide an annual written report for fiscal years 2003 through 2007 on the national registry to include (1) an analysis of the effectiveness of the national registry; (2) the number of consumers who have placed their telephone numbers on the national registry; (3) the number of persons paying fees for access to the national registry and the amount of such fees; (4) an analysis of the progress of coordinating the operation and enforcement of the national registry with similar registries established and maintained by the various states; (5) an analysis of the progress of coordinating operation and enforcement of the national registry with the enforcement activities of the FCC pursuant to the Telephone Consumer Protection Act; and (6) a review of the enforcement proceedings under the Telemarketing Sales Rule in the case of FTC and Telephone Consumer Protection Act in the case of FCC. The FCC issued its annual report for fiscal year 2003 on December 15, 2004. As of December 2004, the FTC had not issued its annual report for fiscal year 2003, but it plans to have it issued by February 2005.

Agency Comments

We provided FTC and FCC with draft copies of this report for their review and comment. FTC and FCC agreed with the contents of our report and provided informal technical comments on the draft, which we have incorporated where appropriate. In addition, FTC noted that quantitative measurement of the effectiveness of a program based on “before and after” snapshots is difficult, particularly in situations like the national registry where only anecdotal evidence of a baseline for the “before” figure exists. According to FTC, when reports from consumers, the media, and professional surveyors consistently conclude that the national registry effectively and successfully protects registered consumers against

invasions of their privacy by most commercial telemarketing calls, it is reasonable to infer the program is working as intended.

We plan to provide copies of this report to Commissioners of the Federal Trade Commission and the Federal Communications Commission and interested congressional committees. We will make copies available to others upon request. In addition, this report will be available at no charge on GAO's Web site at <http://www.gao.gov>.

If you or your staffs have any questions about this report, please contact me on (202) 512-8777 or at jonespl@gao.gov. Individuals making key contributions to this report are listed in appendix IV.



Paul L. Jones, Director
Homeland Security and Justice Issues

Appendix I: FTC Lawsuits and FCC Enforcement Actions Related to the National Do-Not-Call Registry

The Federal Trade Commission (FTC) identified ten lawsuits related to the National Do-Not-Call Registry (the national registry) since enforcement of the national registry became effective October 1, 2004. The Federal Communications Commission (FCC) has issued 16 citations for violations of the national registry and has entered into 2 consent decrees settling investigations of alleged violations of the national registry.

The ten FTC lawsuits are as follows:

- Telephone Protection Agency, Inc., was charged with falsely claiming that it would register consumers with the FCC's national registry, when, in fact, FCC had no such list at the time. The charge also included other violations of the Telemarketing Sales Rule. (Ongoing litigation.)
- National Consumer Council was charged with engaging in or causing others to engage in initiating telephone calls to consumers on the national registry and initiating or causing others to initiate telephone calls to consumers within a given area code without first paying the required access fee for the national registry data, among other violations of the Telemarketing Sales Rule. (Preliminary injunction in place, litigation ongoing.)
- Braglia Marketing Group was charged with engaging in or causing others to engage in initiating telephone calls to consumers on the national registry, abandoning or causing others to abandon telephone calls, and initiating telephone calls to consumers within a given area code without first paying the required access fee for the national registry data. (Filed on behalf of FTC by the Department of Justice, ongoing litigation.)
- Internet Marketing Group, Inc.; OnesetPrice, Inc.; First Choice Terminal, Inc., (Louisiana and Arizona Corporations); B & C Ventures, Inc.; RPM Marketing Group, Inc.; National Event Coordinators, Inc.; and several individual defendants were charged with engaging in or causing others to engage in initiating telephone calls to consumers on the national registry, among other violations of the Telemarketing Sales Rule. (Preliminary injunction in place; litigation ongoing.)
- Free Do Not Call List.org and National Do Not Call List. US was charged with falsely claiming that for a fee it would arrange for consumers' telephone numbers to be placed on the national registry. (Stipulated permanent injunction.)

- Vector Direct Marketing, LLC was charged with unauthorized billing to consumers' for purported do-not-call protection services and for removal of personal information from telemarketers' files and falsely claiming to consumers that for a fee it would remove consumers' personal information from telemarketers' lists. (Stipulated permanent injunction entered June 2004.)
- 4086465 Canada, Inc., a corporation doing business as International Protection Center and Consumers Protection Center was charged with falsely claiming to consumers *inter alia*, that for a fee it would arrange for consumers' telephone numbers to be placed on the national registry. (Ongoing litigation.)
- Debt Management Foundation Services was charged with engaging in or causing others to engage in initiating telephone calls to consumers on the national registry and initiating telephone calls to consumers within a given area code without first paying the required access fee for the national registry data, among other violations of the Telemarketing Sales Rule. (Preliminary injunction in place; litigation ongoing.)
- 3R Bancorp was charged with engaging in or causing others to engage in initiating telephone calls to consumers on the national registry and initiating or causing others to initiate telephone calls to consumers within a given area code without first paying the required access fee for the national registry data, among other violations of the Telemarketing Sales Rule. (Litigation ongoing.)
- FGH International, Inc. was charged with initiating or causing telephone calls to numbers on the national registry and calls to consumers within a given area code without first paying the required access fee. (Litigation ongoing.)

FCC has issued 16 citations for violations of the national registry and has entered into 2 consent decrees settling investigations of alleged violations of the national registry. Table 5 summarizes FCC's enforcement actions as of December 31, 2004.

**Appendix I: FTC Lawsuits and FCC
Enforcement Actions Related to the National
Do-Not-Call Registry**

Table 5: FCC Enforcement Actions under the National Registry as of December 31, 2004

Date of action	Company name	No. of complaints	States where affected consumers located	Type of enforcement action taken
1. Sep. 27, 2004	Equity One	6	California, Florida, Oregon, and Pennsylvania	Warning letter/citation sent to company.
2. Sep. 16, 2004	Envision Mortgage Services, Inc.	13	California	Warning letter/citation sent to company.
3. Sep. 07, 2004	Primus	98	California, Connecticut, Florida, Georgia, Illinois, Maryland, Massachusetts, Michigan, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Puerto Rico, Tennessee, Texas, and Virginia	Consent decree settlement — \$400,000 voluntary payment and implementation of compliance plan.
4. July 06, 2004	BLS Funding	31	Arizona, California, Colorado, Connecticut, Florida, Illinois, Maryland, Massachusetts, Michigan, New Mexico, New Jersey, and Virginia	Warning letter/citation sent to company.
5. July 02, 2004	See Through Windows & Doors LLC	123	Maryland and Virginia	Warning letter/citation sent to company.
6. June 04, 2004	Planet Mortgage Corporation	42	California	Warning letter/citation sent to company.
7. May 28, 2004	Fresh Start Financial	1	California	Warning letter/citation sent to company.
8. May 17, 2004	Key Financial Corporation	97	Alabama, California, Florida, Ohio, and Virginia	Warning letter/citation sent to company.
9. March 31, 2004	American Standard Mortgage	13	Colorado, Illinois, and Ohio	Warning letter/citation sent to company.
10. Feb. 12, 2004	Mortgage Concepts, Inc.	480	Arizona, California, Georgia, Nevada, Ohio, Oregon, South Carolina, and Washington	Warning letter/citation sent to company.
11. Jan. 30, 2004	L.A.P. Holdings, LLC a.k.a. First Finance	84	Arizona, California, Florida, Maryland, and Michigan	Warning letter/citation sent to company.
12. Jan. 12, 2004	Nations Mortgage	163	Florida and Ohio	Warning letter/citation sent to company.
13. Dec. 22, 2003	Debt Masters	1	Nebraska	Warning letter/citation sent to company.
14. Dec. 22, 2003	Ban-Cor Mortgage	109	California	Warning letter/citation sent to company.
15. Dec. 22, 2003	Cactus Cash, Inc.	14	Arizona	Warning letter/citation sent to company.
16. Dec. 22, 2003	Dynasty Mortgage	259	Arizona and California	Warning letter/citation sent to company.

**Appendix I: FTC Lawsuits and FCC
Enforcement Actions Related to the National
Do-Not-Call Registry**

Date of action	Company name	No. of complaints	States where affected consumers located	Type of enforcement action taken
17. Dec. 18, 2003	CPM Funding, Inc.	8	California, Florida, and New Mexico	Warning letter/citation sent to company.
18. Nov. 03, 2003	AT&T Corporation (FTC's contractor, AT&T Government Solutions, is a unit within the larger corporation.)	29 complainants reporting 78 separate alleged company-specific do-not-call violations, as well as 438 complaints alleging national registry violations	Alabama, California, Connecticut, Florida, Georgia, Michigan, Minnesota, New Jersey, Ohio, Oregon, Rhode Island, South Carolina, and Washington	Initially proposed forfeiture \$780,000 (\$10,000 per violation) for company-specific violations (Forfeiture not final). Consent decree settlement - \$490,000 voluntary payment and implementation of compliance plan for separate national registry and company-specific do-not-call investigations.

Source: FCC staff and Web site.

Appendix II: Information on the Two Surveys About the National Do-Not-Call Registry

Two surveys have been conducted about the National Do-Not-Call Registry (the national registry) since it went into effect in October 2003—one survey by Harris Interactive® and one by Customer Care Alliance.¹ The results of these surveys may provide some indications of the national registry's overall performance; however, we are uncertain about how representative the results of each actually are of the opinions and experiences of adults nationwide, and we are uncertain of the accuracy of the measures in the Customer Care Alliance survey. Notwithstanding limitations of these surveys, FTC considers the surveys' results to have found that most people know about the national registry and that most people who say they have a telephone number on the national registry say they are getting fewer calls creating some confidence that the results are generally correct.

The Harris Interactive Survey

The Harris Interactive survey was conducted on-line within the United States in January 2004 with a sample of nearly 3,400 adults from its multimillion-member Harris Poll market research panel of individuals specially recruited to participate in large surveys. In this brief survey, respondents were asked whether they knew about the national registry; whether they had registered for it; and, for those who had registered, an opinion question was asked about whether they had received more, about the same, or less telemarketing calls since registering. While respondents were asked whether they believed survey research firms and pollsters were exempt from calling restrictions, they were asked no further questions about their knowledge of what types of telemarketing calls are prohibited and what types of calls are exempt. Of all respondents, 91 percent indicated that they had heard of the national registry, and 57 percent indicated that they had signed-up for it. Of those who had registered, 25 percent answered that they had received no telemarketing calls since signing up, and 67 percent responded that they had received a little or far less calls than before signing up. Two-thirds (68 percent) of respondents who had registered answered that they did not know if survey

¹Harris Interactive® conducted an additional Harris Poll survey on the national registry; however, it was done in August 2003, just before the registry went into effect. In this brief telephone survey of just over 1,000 adults, respondents were asked whether they knew about the national registry, whether they had already registered or were planning to register for it, the extent to which they expected unsolicited telephone calls to decrease for people who registered, and asked about their knowledge of the types of unsolicited calls to which the registry applied. There was no attempt to measure the number of telemarketing calls respondents had received during any time period.

research firms and pollsters were allowed to call. The survey data were weighted using both demographic and propensity score weights to be representative of the total adult population. However, because the survey sample consisted of computer users in its market research panel and the sample was selected using nonprobabilistic methods, we are uncertain how representative the results actually are of the opinions and experiences of adults nationwide.

Customer Care Alliance Survey

Customer Care Alliance conducted a telephone survey during February through April 2004 with about 850 adults nationwide. Among other topics and as in the Harris survey, respondents were asked whether they were aware of the national do-not-call legislation, and if so, whether they had signed up for the national registry. However, unlike the Harris survey, for those who had signed-up, this survey attempted to quantify changes in the number of telemarketing calls the respondents had received since signing-up for the national registry compared to prior to registering. To measure changes in telemarketing call volume, these respondents were asked to estimate about how many telemarketing calls they had received per month prior to registering for the national registry and in the month prior to being interviewed for the survey. Respondents were also asked whether they had been on the national registry for more or less than 3 months. No questions were asked about respondents' knowledge of what types of telemarketing calls are prohibited and what types of calls are exempt from the national registry. Ninety-two percent of all respondents answered that they were aware of the national do-not-call legislation, and 60 percent of all respondents said that they had placed their primary home telephone number on the national registry. Respondents who had signed up for the national registry reported receiving an average of about 30 telemarketing calls per month prior to registering and an average of 6 calls per month after signing up, for an 80 percent reduction.

We are uncertain how representative the results of the Customer Care Alliance survey are of the opinions and experiences of adults nationwide because of certain limitations. First, the reported survey response rate was only 20 percent. Second, there appears to be a high degree of nonresponse bias in the respondent sample that may be due to the low response rate. The report indicates that the sample of survey respondents overrepresented adults in the U.S. population 45 years of age and older and underrepresented adults between the ages of 18 and 44. Additionally, individuals with incomes of less than \$35,000 were greatly

underrepresented and those with incomes of more than \$50,000 were overrepresented.

We are also uncertain about the accuracy of the measures used in the survey because of additional limitations. First, calls from charitable organizations were incorrectly included in a list of the types of prohibited telemarketing calls that was read to respondents in several questions. Second, while the approach to quantify changes in telemarketing call volume gives the appearance of obtaining quantifiable numbers about the national registry's effect on the telemarketing call volume, we are uncertain about the validity of the answers to these questions. In a telephone interview, a month is a long time period to expect respondents to accurately recall telemarketing call volume. This recall is even more of a problem when respondents are asked to recollect during a telephone interview monthly call volumes from more than 3 months in the past, and over 80 percent of the individuals who reported signing up for the national registry said they had done so more than 3 months prior to being interviewed. So, given the length of time that had transpired since registering for such a large percentage of the survey sample and the complexities of what types of telemarketing calls are prohibited and what types of calls are exempt, we believe that it is unlikely that respondents could have accurately estimated the average number of calls received per month either before or after registering.

Appendix III: Comments from the Federal Trade Commission



THE CHAIRMAN

FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

January 18, 2005

Mr. Paul L. Jones
Director, Homeland Security and Justice
US Government Accountability Office
441 G Street NW
Washington, DC 20548

Dear Mr. Jones:

Thank you for the opportunity to comment on the Government Accountability Office's draft report titled *Telemarketing: Implementation of the National Do-Not-Call Registry* (GAO-05-113) ("GAO Report" or "Report"). As the GAO Report concludes, the National Do-Not-Call Registry ("DNC Registry") is successful by three measures. Specifically, the Commission had the DNC Registry operational by the end of calendar 2003; the system could and did enroll over 60 million telephone numbers within one year of operation (June 2004); and all evidence indicates that most consumers who say they have registered their telephone numbers are receiving substantially fewer telemarketing calls.

We understand that the agencies' respective staffs have worked cooperatively throughout the preparation of this Report and that the Commission staff has provided informal technical comments on the draft of the Report to the GAO staff, the vast majority of which have been incorporated. The Commission does not disagree with the contents of the Report. As FTC staff noted, quantitative measurement of the effectiveness of a program based on "before and after" snapshots is often difficult, particularly in situations like the Do-Not-Call program where only anecdotal evidence of a baseline for the "before" figure exists. Nonetheless, when reports from consumers, the media, and professional surveyors consistently conclude that the DNC Registry effectively and successfully protects registered consumers against invasions of their privacy by most commercial telemarketing calls, it is reasonable to infer that the program is working as intended. This is especially so when there is no evidence to the contrary.

In addition, viewed from the perspective of industry compliance, the DNC Registry is a striking success. The relatively small number of complaints – 675,337 through December 11, 2004, or 1% of the number of registrations through that date – suggests that overall compliance with the DNC Registry is high. Additionally, the FTC's early enforcement record sends a strong message to telemarketers that the FTC is ready and able to address violations of the DNC Registry. To date, ten law enforcement actions have been filed in federal district court, either by the Department of Justice on behalf of the FTC to obtain injunctions and civil penalties, or by the FTC itself to obtain injunctions and consumer redress.

Mr. Paul Jones
January 18, 2005

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Finally, with respect to state participation in the DNC Registry, we believe that harmonization efforts have continued to be successful. All but eight of the states that maintain their own registries have shared their registration data with the DNC Registry, thereby minimizing consumer confusion and making telemarketer access to the DNC Registry more efficient. The Commission continues to work with the remaining states to coordinate their registries and relevant laws with the DNC Registry.

The Commission appreciates the opportunity to review and comment on GAO's Report.

By direction of the Commission.


Deborah Platt Majoras
Chairman

Appendix IV: GAO Contacts and Staff Acknowledgments

GAO Contacts

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Linda R. Watson, Assistant Director (202) 512-8685

Staff Acknowledgments

In addition to those mentioned above, David Alexander, John E. Bagnulo, Frances Cook, Katherine Davis, and Julian L. King made key contributions to this report.

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