

DO-NOT-CALL IMPROVEMENT ACT OF 2007

DECEMBER 11, 2007.—Committed to the Committee of the Whole House on the State
of the Union and ordered to be printed

Mr. DINGELL, from the Committee on Energy and Commerce,
submitted the following

R E P O R T

[To accompany H.R. 3541]

[Including cost estimate of the Congressional Budget Office]

The Committee on Energy and Commerce, to whom was referred the bill (H.R. 3541) to amend the “Do-not-call” Implementation Act to eliminate the automatic removal of telephone numbers registered on the Federal “do-not-call” registry, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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AMENDMENT

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Do-Not-Call Improvement Act of 2007”.

SEC. 2. PROHIBITION OF EXPIRATION DATE FOR REGISTERED NUMBERS.

The Do-Not-Call Implementation Act (15 U.S.C. 6101 note) is amended by adding at the end the following:

“SEC. 5. PROHIBITION OF EXPIRATION DATE.

“(a) **NO AUTOMATIC REMOVAL OF NUMBERS.**—Telephone numbers registered on the national ‘do-not-call’ registry of the Telemarketing Sales Rule (16 C.F.R. 310.4(b)(1)(iii)) since the establishment of the registry and telephone numbers registered on such registry after the date of enactment of this Act, shall not be removed from such registry except as provided for in subsection (b) or upon the request of the individual to whom the telephone number is assigned.

“(b) **REMOVAL OF INVALID, DISCONNECTED, AND REASSIGNED TELEPHONE NUMBERS.**—The Federal Trade Commission shall check telephone numbers registered on the national ‘do-not-call’ registry against national or other appropriate databases twice each month and shall remove from such registry those telephone numbers that have been disconnected and reassigned. Nothing in this section prohibits the Federal Trade Commission from removing invalid telephone numbers from the registry at any time.”.

PURPOSE AND SUMMARY

The purpose of H.R. 3541, the Do-Not-Call Improvement Act of 2007, is to prohibit the Federal Trade Commission (FTC) from removing telephone numbers from the National Do-Not-Call Registry (Registry) at the end of specific time periods. When the Registry was created in 2003, the FTC promulgated rules that required consumers to register their phone numbers every five years and required the FTC to remove disconnected phone numbers periodically. H.R. 3541 would prohibit the FTC from removing numbers from the Registry at the end of this five-year period or any other specified period. The bill also would authorize the FTC to continue to purge the Registry of disconnected and reassigned phone numbers.

BACKGROUND AND NEED FOR LEGISLATION

In 2003, the FTC amended its Telemarketing Sales Rule (TSR) to establish the Registry, which contains a list of consumers whom telemarketers are prohibited from calling. Today, the Registry contains over 145 million telephone numbers and has been tremendously successful in protecting consumers from unwanted telemarketing calls.

In connection with the 2003 rulemaking proceeding, the FTC adopted a five-year re-registration mechanism and indicated that the Registry would be periodically purged of numbers that have been disconnected or reassigned. As part of the public comment period, the FTC was informed that 16 percent of all telephone numbers change each year and that 20 percent of all Americans move each year. The FTC determined that, unless the Registry included a process to counteract this effect, over a period of time, the Registry would include more and more numbers that had been disconnected and then reassigned to new subscribers even though the new subscribers might not object to receiving telemarketing calls. The FTC also noted that 13 State registries had re-registration re-

quirements ranging from 1 year to 5 years, while 14 States had no re-registration requirement. Based on this record, the FTC concluded that a five-year registration period, coupled with periodic scrubbing of disconnected numbers adequately balanced privacy and commercial speech interests, as well as the need to maintain a high level of accuracy in the Registry with the imposition on consumers.

In the interim, several changes have occurred that require Congress and the agency to revisit this issue. First, changes in the marketplace, including increased use of cell phones and increased popularity of telephone number portability, call into question the data underlying the 2003 rulemaking proceeding. Second, the FTC prevailed in two constitutional challenges to the Registry. See *National Federation of the Blind v. FTC*, 420 F. 3d 331 (3rd Cir. 2005); *Mainstream Mktg. Services v. FTC*, 358 F. 3d 1228 (10th Cir. 2004). One overarching theme of the FTC's argument in those challenges involved the care that the FTC put forth in ensuring that the Registry included only the telephone numbers of consumers who had indicated a preference not to receive telemarketing calls. Third, the Registry has been implemented successfully for nearly five years with the operation of a scrubbing program through which telephone numbers that have been disconnected and reassigned are purged from the Registry on a monthly basis. Fourth, the Registry's unprecedented popularity means that tens of millions of numbers would soon have to be deleted and re-registered creating chaos and uncertainty. Special concerns have been raised about the affect on senior citizens.

At an October 23, 2007, hearing before the Subcommittee on Commerce, Trade, and Consumer Protection on unrelated legislation, the Director of the FTC Bureau of Consumer Protection stated that: "the Commission now commits that it will not drop any telephone numbers from the Registry based on the five-year expiration period pending final Congressional or agency action on whether to make registration permanent." The Committee reports this legislation to address this problem. It expects the FTC to continue its robust efforts to maintain the accuracy of the Registry and to ensure the continued effectiveness and success of the Do-Not-Call program.

HEARINGS

No hearings were held in the Committee on H.R. 3541.

COMMITTEE CONSIDERATION

On Tuesday, October 30, 2007, the full Committee met in open markup session and ordered H.R. 3541 favorably reported to the House, amended, by a voice vote.

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the record votes on the motion to report legislation and amendments thereto. There were no record votes taken on amendments or in connection with ordering H.R. 3541 reported. A motion by Mr. Dingell to order H.R. 3541 fa-

vorably reported to the House, amended, was agreed to by a voice vote.

COMMITTEE OVERSIGHT FINDINGS

Regarding clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the oversight findings of the Committee regarding H.R. 3541 are reflected in this report.

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

The purpose of H.R. 3541 is to reduce the harm to individuals from telemarketing fraud and abuse by prohibiting the FTC from removing phone numbers from the Registry at the end of specific time periods.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

Regarding compliance with clause 3(c)(2) of rule XXI of the Rules of the House of Representatives, the Committee finds that H.R. 3541 would result in no new or increased budget authority, entitlement authority, or tax expenditures or revenues.

EARMARKS AND TAX AND TARIFF BENEFITS

Regarding compliance with clause 9 of rule XXI of the Rules of the House of Representatives, H.R. 3541 does not contain any Congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(d), 9(e), or 9(f) of rule XXI.

COMMITTEE COST ESTIMATE

The Committee adopts as its own the cost estimate on H.R. 3541 prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

Pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the following is the cost estimate on H.R. 3541 provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974:

NOVEMBER 30, 2007.

Hon. JOHN D. DINGELL,
Chairman, Committee on Energy and Commerce,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 3541, the Do-Not-Call Improvement Act of 2007.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Susan Willie.

Sincerely,

PETER R. ORSZAG.

Enclosure.

H.R. 3541—Do-Not-Call Improvement Act of 2007

H.R. 3541 would prohibit the Federal Trade Commission (FTC) from removing phone numbers from its “do-not-call” registry except under certain conditions. The “do-not-call” registry contains a list of consumers that telemarketers are prohibited from calling. The bill would require the FTC to purge the registry twice per month of phone numbers that have been disconnected and reassigned. The bill also would require the FTC to remove phone numbers at consumers’ request.

When the registry was created in 2003, the FTC developed rules that required consumers to re-register their phone numbers every five years and required the FTC to remove disconnected phone numbers periodically. H.R. 3541 would codify and extend the rules by increasing the number of times per month the FTC must purge the registry of disconnected and reassigned numbers. Based on information from the FTC, CBO estimates that implementing the bill would cost less than \$500,000 annually to purge the registry twice per month, rather than monthly, as performed under current law.

H.R. 3541 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would not affect the budgets of state, local, or tribal governments.

The CBO staff contact for this estimate is Susan Willie. This estimate was approved by Theresa Gullo, Deputy Assistant Director for Budget Analysis.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates regarding H.R. 3541 prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by H.R. 3541.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds that the Constitutional authority for this legislation is provided in Article I, section 8, clause 3, which grants Congress the power to regulate commerce with foreign nations, among several States, and with the Indian tribes.

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act of 1995.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short title

Section 1 establishes the short title of the bill as the “Do-Not-Call Improvement Act of 2007”.

Section 2. Prohibition of expiration date for registered numbers

Section 2 adds a new section to the Do-Not-Call Implementation Act (15 U.S.C. 6101 note). New Section 5(a) provides that telephone numbers registered on the Registry both since its establishment and after the date of enactment of H.R. 3541 shall not be removed from the Registry except as provided for in subsection (b) or upon the request of the individual to whom the telephone number is assigned. Section 5(b) directs the FTC to check telephone numbers registered on the Registry against national or other appropriate databases twice each month, and to remove from the Registry those telephone numbers that have been disconnected and reassigned. The bill clarifies that nothing in this section prohibits the FTC from removing invalid telephone numbers from the Registry at any time.

It continues to be the intention of the Committee to allow citizens who do not wish to receive calls covered under this legislation to opt out from receiving those calls in a simple, seamless, and reliable manner. In that regard, the Committee assumes that the FTC and the Federal Communications Commission will ensure that any contractor implementing the requirements of this legislation does so in a manner that does not result in the removal of citizens' phone numbers from the "Do-Not-Call" list solely because they have changed service providers, or because they have added or removed features from their service (e.g., caller ID, call waiting), so long as the service modification does not separate the citizen from the phone number they have registered with the "Do-Not-Call" list.

The FTC submitted written views dated November 16, 2007, indicating that requiring that numbers be purged from the Registry twice a month is likely to result in more people being erroneously removed from the Registry (see Appendix). The Committee expects the FTC to maintain the accuracy of the Registry. As a result, the Committee intends to offer an amendment during Floor consideration to strike the mandate on frequency with which numbers must be removed from the Registry in light of the agency's views.

ADDITIONAL MATERIALS
UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580



Office of the Director
Bureau of Consumer Protection

November 16, 2007

The Honorable Mike Doyle
U.S. House of Representatives

Dear Representative Doyle,

I write to express concerns recently brought to our attention regarding a provision in H.R. 3541, the "Do Not Call Improvement Act of 2007," that requires the Federal Trade Commission to increase the frequency with which numbers no longer assigned to the registrant are removed from the National Do Not Call Registry. The Commission appreciates the extent to which you and your staffs have worked with us as this legislation proceeds to ensure that consumers who want to remain on the Do Not Call Registry do not receive unwanted telemarketing calls.

As you know, the FTC contracts out the operation of the Do Not Call Registry, and the contractor subcontracts the number "purging" function to another entity. This subcontractor informed us recently that requiring that numbers be purged from the Do Not Call Registry twice a month, as specified in an amendment adopted to H.R. 3541 in the Energy and Commerce Committee consideration of the measure on October 30, instead of once a month as is the current practice, is likely to result in more people being erroneously removed from the registry.

We understand from the subcontractor that in order to ensure that people who wish to remain on the registry are not removed, the subcontractor uses multiple data points, which it receives at different times throughout the month. The subcontractor advised us that it now takes a full month to obtain and check its various data sources, and that mandating more frequent purges would result in more numbers being removed despite registrants' wishes not to be called.

Like you, the FTC wants to ensure that the National Do Not Call Registry is accurate. To this end, and in light of the new information we received from our subcontractor, we respectfully request that H.R. 3541 be modified to strike any mandate on the frequency with which numbers must be removed from the registry. Please know, however, that we are mindful of the need to balance consumers' desire not to receive unwanted calls with telemarketers' desire to reach those people who do not want to be on, or remain on, the registry. To this end, we have asked the subcontractor to examine whether numbers can be removed from the registry more frequently while maintaining the registry's accuracy, perhaps by the subcontractor expediting its procurement of data it uses to verify whether removal is appropriate, or by its elimination of non-essential data. Also, as technology develops, we will continue to explore opportunities to remove numbers faster. By continuing to work with our contractor and subcontractor, with the Direct Marketing Association and other national associations representing telemarketers, and

with consumers and consumer advocates, we will try to ensure on an ongoing basis that numbers are removed as swiftly as feasible while continuing to honor consumers' wishes.

Sincerely,

Lydia B. Parnes/MBL

Lydia B. Parnes
Director

cc: Ch. Dingell
Rep. Barton
Rep. Rush
Rep. Stearns
Rep. Pickering

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (new matter is printed in italic and existing law in which no change is proposed is shown in roman):

DO-NOT-CALL IMPLEMENTATION ACT

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SEC. 5. PROHIBITION OF EXPIRATION DATE.

(a) NO AUTOMATIC REMOVAL OF NUMBERS.—Telephone numbers registered on the national “do-not-call” registry of the Telemarketing Sales Rule (16 C.F.R. 310.4(b)(1)(iii)) since the establishment of the registry and telephone numbers registered on such registry after the date of enactment of this Act, shall not be removed from such registry except as provided for in subsection (b) or upon the request of the individual to whom the telephone number is assigned.

(b) REMOVAL OF INVALID, DISCONNECTED, AND REASSIGNED TELEPHONE NUMBERS.—The Federal Trade Commission shall check telephone numbers registered on the national “do-not-call” registry against national or other appropriate databases twice each month and shall remove from such registry those telephone numbers that have been disconnected and reassigned. Nothing in this section prohibits the Federal Trade Commission from removing invalid telephone numbers from the registry at any time.

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