

(1) *System name*: Privacy Act and Freedom of Information Act Case Files.

(2) *Exemption*: During the processing of a Freedom of Information Act (FOIA) and Privacy Act (PA) request, exempt materials from other systems of records may in turn become part of the case record in this system. To the extent that copies of exempt records from those other systems of records are entered into this system, the Inspector General, DoD, claims the same exemptions for the records from those other systems that are entered into this system, as claimed for the original primary system of which they are a part.

(3) *Authority*: 5 U.S.C. 552a(j)(2), (k)(1), (k)(2), (k)(3), (k)(4), (k)(5), (k)(6), and (k)(7).

(4) *Reasons*: Records are only exempt from pertinent provisions of 5 U.S.C. 552a to the extent such provisions have been identified and an exemption claimed for the original record and the purposes underlying the exemption for the original record still pertain to the record which is now contained in this system of records. In general, the exemptions were claimed in order to protect properly classified information relating to national defense and foreign policy, to avoid interference during the conduct of criminal, civil, or administrative actions or investigations, to ensure protective services provided the President and others are not compromised, to protect the identity of confidential sources incident to Federal employment, military service, contract, and security clearance determinations, to preserve the confidentiality and integrity of Federal testing materials, and to safeguard evaluation materials used for military promotions when furnished by a confidential source. The exemption rule for the original records will identify the specific reasons why the records are exempt from specific provisions of 5 U.S.C. 552a.

Dated: March 25, 2003.

**Patricia L. Toppings,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

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## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 64

[CG Docket No. 02-278, FCC 03-62]

### Rules and Regulations Implementing the Telephone Consumer Protection Act (TCPA) of 1991

**AGENCY**: Federal Communications Commission.

**ACTION**: Further notice of proposed rulemaking.

**SUMMARY**: In this document, the Commission seeks comment on The Do-Not-Call Implementation Act (Do-Not-Call Act), which requires the Federal Communications Commission (FCC or Commission) to issue final rules in the Telephone Consumer Protection Act (TCPA) proceeding within 180 days, to maximize consistency with the Federal Trade Commission's (FTC) rules, and to issue reports to Congress within 45 days of the promulgation of final rules, and annually thereafter.

**DATES**: Comments are due May 5, 2003 and reply comments are due May 19, 2003.

**ADDRESSES**: Federal Communications Commission, 445 12th Street, SW, Room TW-A325, Washington, DC 20554. See supplementary information for further filing instructions.

**FOR FURTHER INFORMATION CONTACT**: Erica H. McMahon or Richard D. Smith, Policy Division, Consumer & Governmental Affairs Bureau, (202) 418-2512.

**SUPPLEMENTARY INFORMATION**: This is a summary of the Commission's Further Notice of Proposed Rulemaking (FNPRM) in CG Docket No. 02-278, FCC 03-62, released March 25, 2003. The full text of this document is available on the Commission's Electronic Comment Filing System at <http://www.fcc.gov/e-file/ecfs.html>, and for public inspection during regular business hours in the FCC Reference Center, Room CY-A257, 445 12th Street, SW., Washington, DC 20554.

### Synopsis of Further Notice of Proposed Rulemaking

1. On March 11, 2003, the Do-Not-Call Act was signed into law requiring the Commission to issue a final rule in the above-captioned proceeding within 180 days of March 11, 2003, and to consult with the FTC to maximize consistency with the rule promulgated by the FTC in 2002. The Do-Not-Call Act also requires the Commission to issue reports to Congress within 45 days after the promulgation of final rules in this

proceeding, and annually thereafter. In this FNPRM, we seek comment on these requirements.

2. On December 20, 1991, Congress enacted the Telephone Consumer Protection Act of 1991 (TCPA) in an effort to address a growing number of telephone marketing calls and certain telemarketing practices thought to be an invasion of consumer privacy and even a risk to public safety. The statute restricts the use of automatic telephone dialing systems, artificial and prerecorded messages, and telephone facsimile machines to send unsolicited advertisements. The TCPA specifically authorizes the Commission to "require the establishment and operation of a single national database to compile a list of telephone numbers of residential subscribers who object to receiving telephone solicitations." In 1992, the Commission adopted rules implementing the TCPA but declined to create a national database of telephone subscribers who do not wish to receive calls from telemarketers. The Commission opted instead to implement an alternative scheme—one involving company-specific do-not-call lists. In 1995 and 1997, the Commission released orders (60 FR 42068, August 15, 1995; 62 FR 19686, April 23, 1997) addressing petitions for reconsideration of the *TCPA Order* (57 FR 48333, October 23, 1992).

3. On September 18, 2002, the Commission released a Notice of Proposed Rulemaking (NPRM) and Memorandum Opinion and Order (67 FR 62667, October 8, 2002) seeking comment on whether the Commission's rules need to be revised in order to carry out more effectively Congress's directives in the TCPA. Specifically, we sought comment on whether to revise or clarify our rules governing unwanted telephone solicitations and the use of automatic telephone dialing systems, prerecorded or artificial voice messages, and telephone facsimile machines. We also sought comment on the effectiveness of company-specific do-not-call lists. In addition, we sought comment on whether to revisit the option of establishing a national do-not-call list and, if so, how such action might be taken in conjunction with the FTC's proposal to adopt a national do-not-call list and with various state do-not-call lists. In considering ways in which we might improve our TCPA rules, our goal is to enhance consumer privacy protections while avoiding imposing unnecessary burdens on the telemarketing industry, consumers, and regulators. Lastly, we sought comment on the effect proposed policies and rules would have on small business entities,

including *inter alia* those who engage in telemarketing activities and those who rely on telemarketing as a method to solicit new business.

4. On December 18, 2002, the FTC released an order establishing a national do-not-call registry and making other changes to its Telemarketing Sales Rule (68 FR 4580, January 29, 2003). Congress approved funding for the FTC's do-not-call registry as part of the 2003 omnibus budget. Furthermore, the FTC has announced that it will begin to take registrations for a do-not-call registry on July 1, 2003, and that the registry will go into effect on October 1, 2003.

5. In the Do-Not-Call Act, Congress requires this Commission to issue final rules in the above-captioned proceeding by September 7, 2003. The Do-Not-Call Act provides that the FCC shall consult and coordinate with the FTC to maximize consistency with the rule promulgated by the FTC. Congress also requires the Commission to transmit a report on regulatory coordination to the House Committee on Energy and Commerce and the Senate Committee on Commerce, Science, and Transportation. The Commission is required to provide:

(1) An analysis of the telemarketing rules promulgated by both the Federal Trade Commission and the Federal Communications Commission;

(2) An analysis of any inconsistencies between the rules promulgated by each Commission and the effect of any such inconsistencies on consumers, and persons paying for access to the registry; and

(3) Proposals to remedy any such inconsistencies.

The Do-Not-Call Act also requires the Commission to file an annual report to the House Committee on Energy and Commerce and the Senate Committee on Commerce, Science and Transportation, which includes:

(1) An analysis of the effectiveness of the "do-not-call" registry as a national registry;

(2) The number of consumers who have placed their telephone numbers on the registry;

(3) The number of persons paying fees for access to the registry and the amount of such fees;

(4) An analysis of the progress of coordinating the operation and enforcement of the "do-not-call" registry with similar registries established and maintained by the various States;

(5) An analysis of the progress of coordinating the operation of the "do-not-call" registry with the enforcement activities of the Commission pursuant to the TCPA; and

(6) A review of the enforcement proceedings by the Commission under the TCPA.

6. As stated above, the Do-Not-Call Act requires the FCC, in the course of the above-captioned proceeding, to "maximize consistency" with the FTC's recent amendments to its Telemarketing Sales Rule. We seek comment on how the FCC can maximize consistency with the FTC's rules. We encourage commenters to review the rules promulgated by the FTC and to comment on how the FCC should consider amending its rules, given the new statutory directive. We seek comment on how the goals and principles identified in the Do-Not-Call Act should affect our implementation of the Act and how to harmonize the requirements of the Do-Not-Call Act with our statutory mandate in the TCPA. We also seek comment on how the FCC can best fulfill the reporting requirements contained in the statute. On December 20, 2002, the Consumer & Governmental Affairs Bureau issued a Public Notice (67 FR 78763, December 26, 2002) extending the reply comment period in the TCPA proceeding until January 31, 2003, to ensure that all interested parties had ample opportunity to comment on possible Commission action in light of the FTC's new rules. Parties are advised not to reiterate comments previously filed in this proceeding because any previously filed comments will be duly considered.

#### Procedural Issues

##### A. *Ex Parte* Presentations

7. This is a non-restricted notice and comment rulemaking proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided that presentations are disclosed as provided in the Commission's rules.

##### B. *Filing of Comments and Reply Comments*

8. We invite comment on the issues and questions set forth above. Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments on or before May 5, 2003, and reply comments on or before May 19, 2003. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings* (63 FR 24121, May 1, 1998).

9. Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. Generally, only one copy of

an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to [ecfs@fcc.gov](mailto:ecfs@fcc.gov), and should include the following words in the body of the message, "get form." A sample form and directions will be sent in reply. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistrionix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission. Parties also should send four (4) paper copies of their filings to Kelli Farmer, Federal Communications Commission, Room 4-C740, 445 12th Street, SW., Washington, DC 20554.

10. Accessible formats (computer diskettes, large print, audio recording and Braille) are available to persons with disabilities by contacting Brian Millin of the Consumer & Governmental Affairs Bureau, at (202) 418-7426, TTY (202) 418-7365, or at [bmillin@fcc.gov](mailto:bmillin@fcc.gov).

**Ordering Clauses**

11. The Further Notice of Proposed Rulemaking is adopted.

**List of Subjects in 47 CFR Part 64**

Telephone.

Federal Communications Commission.  
**William F. Caton,**  
*Deputy Secretary.*  
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