

Telemarketing Fraud and Do Not Call

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Telemarketing Fraud Facts

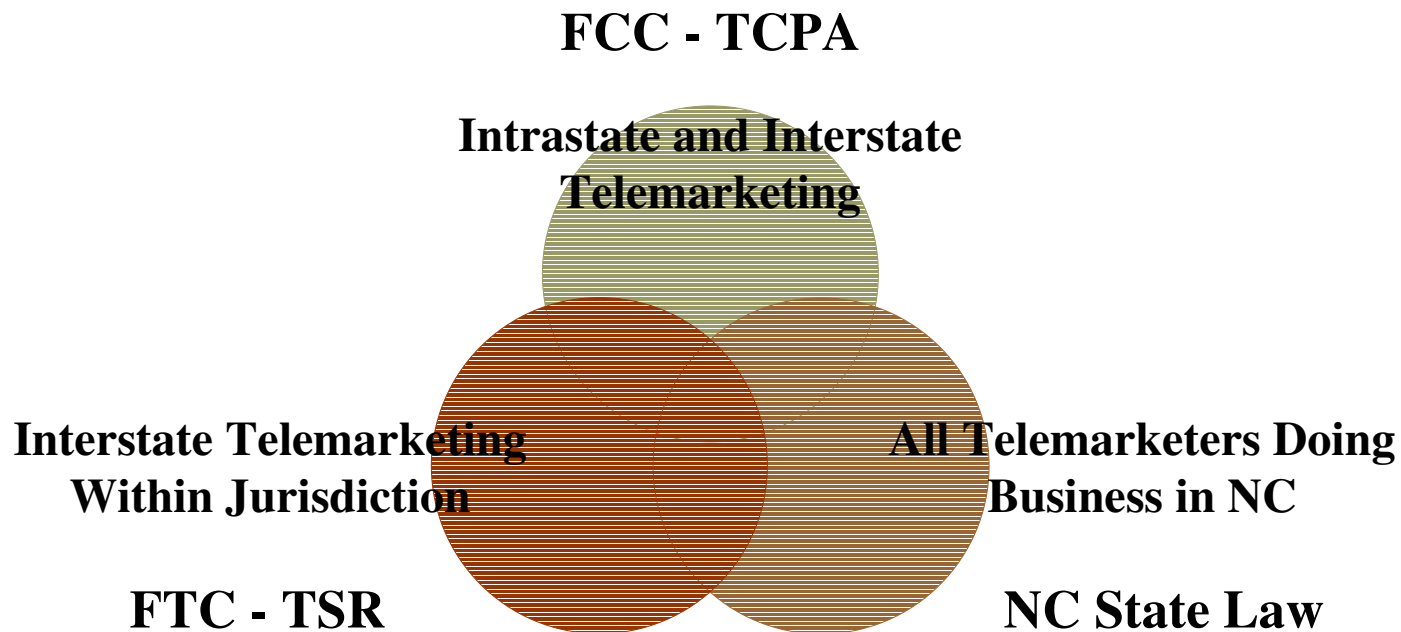
- o Estimated \$40 billion a year “industry”
- o 10% of telemarketing firms operating in the U.S. may be fraudulent
- o 40% of telemarketing fraud victims reported the inability to distinguish between legitimate and illegitimate telemarketers



Military Communities Target of Telemarketing Fraud

- o Telephone callers posing as IRS contact military family members claiming they were entitled to a \$4000 “Armed Forces” refund
- o Relatives of deployed troops receive calls from private company promising daily updates on their loved-one for \$100 per month
- o Fake charity calls to collect money “for the troops”

‘Do Not Call’ Enforcement





Common Tools of Enforcement

- o National Do Not Call Registry
 - v Exceptions
 - o Express Consent
 - o Established Business Relationship
- o Company-Specific Do Not Call Lists
- o Call Time Restrictions
- o Caller Identification Requirements
- o Written Procedures and Training
- o Private Right of Enforcement



National Do Not Call Registry

- o The FTC Maintains the Registry
- o Over 2 Million North Carolina phone numbers listed in the Registry
- o Consumers can register by calling toll-free or via the Internet
- o Telemarketers must obtain a copy every three months, every month starting Jan. 2005
- o Registration valid for up to 5 years
- o Supreme Court rejects TM Appeal, 10/4/2004



Do Not Call Registry Exceptions

- o Express Consent
 - v Express, written agreement to call telephone number with signature
 - v NC: independent form with telephone subscriber's signature



Do Not Call Registry Exceptions

- o Established Business Relationship
 - v 18 months from the date of purchase or transaction with caller or affiliate
 - v 3 months from the date of any inquiry or application



Company Specific Do Not Call Lists

- o Can not call those who have previously requested not to be called
- o Maintain numbers on the list for 5 years
- o Effectuate request within 30 days*
- o EBR may be terminated by customer's request to be placed on the company's list



Call Time and Caller ID

- o 8:00 a.m. to 9:00 p.m., recipient's local time
- o Transmission of Caller ID information required, name (when available) and telephone number
- o Telephone number displayed must be functional during normal business hours



Written Procedures and Training

- o Written Do Not Call Policy
- o Use and documentation of “Scrubbing” process
- o Training telemarketing personnel
- o Recording and maintenance of Company-Specific Do Not Call list
- o Safe harbor provisions

Private Enforcement

- o Consumer may file suit in state court against violators
 - v FCC- Receive \$500 per violation or actual monetary loss
 - o Automatic right after one autodialed, prerecorded call; otherwise need more than one call within a year to trigger private right
 - v FTC- Minimum \$50,000 actual damages
 - v NC - \$500 for 1st violation, \$1000 for 2nd violation, and \$5000 for 3rd and others



Exempt Telephone Calls

- o Calls made by Tax Exempt Non Profit Organizations
 - v FTC company-specific DNC rules apply to for-profit TMs hired by non-profits
- o Business-to-Business calls
- o Political or Polling Calls
- o Debt Collection Calls
- o Market Research or Survey Calls
- o North Carolina: small business, face-to-face, newspapers



Autodialed, Prerecorded Messages

- o Call Abandonment Provisions: no more than 3% of calls abandoned
- o **FCC:** All PRMs prohibited to emergency lines, hospitals, cell phone if unsolicited and recipient charged for the call
- o **FCC:** PRM-to-residence restricted unless prior express consent obtained, noncommercial in nature, established business relationship exists, commercial w/out unsolicited advertisement or telephone solicitation
- o **NC:** Broad PRM-to-residence restrictions – only exceptions:
 - v Prior express consent
 - v Live operator precedes PRM to obtain consent
 - v Debt collection
 - v Utility, telephone, or cable outages
 - v Non-solicitation calls by tax-exempt nonprofit, government, political or opinion polling entity



The Registry is Working

- o 91% of all adults have heard of the Registry
- o 56% of adults say they have signed up
- o Over 90% of those who have signed up report receiving fewer telemarketing calls



Telemarketing Fraud

- o Generally any scheme to defraud in which the telephone serves as the primary method of communicating with the victim
- o Initial contact: Phone (cold calls), Mail, Print Ads
- o Most Common Scams:
 - v Advance fee loans and credit cards
 - v Phony prizes and sweepstakes
 - v Work at Home schemes
 - v Lotteries and Lottery Clubs



Civil Enforcement

- o N.C. Unfair and Deceptive Practices Act
- o FTC-Telemarketing Sales Rule
 - v Disclosures
 - o Identity of Seller
 - o Purpose of the call
 - o Negative option feature
 - o Upsells
 - o No purchase or payment is necessary to win prize promotion and purchase will not increase chances of winning
 - v Other
 - o Loans and credit
 - o Threats and intimidation
 - o Express, verifiable authorization
 - v Third Party Liability for Assisting and Facilitating





Criminal Sanctions

- o Fraud, False Pretenses, Larceny
- o Mail and Wire Fraud (18 USC §§1341, 1343)
- o Money-Laundering (18 USC §§1956, 1957)
- o Financial Institution/Bank Fraud (18 USC § 1344)
- o Electronic Fund Transfer Act (15 USC §1693)
- o Sentencing Provisions
 - v SCAMS Act of 1994
 - v Telemarketing Fraud Prevention Act of 1998





Contacts

- o FCC
 - v 1-888-CALL-FCC
- o FTC
 - v National Do Not Call Registry
 - o 1-888-382-1222
 - o <https://www.donotcall.gov>
 - v Military Sentinel
 - o <http://www.consumer.gov/military>
 - v Consumer Sentinel
 - o <http://www.consumer.gov/sentinel>
- o NC Attorney General
 - v Fraud
 - o 1-877-5NO-SCAM or (919) 716-6000
 - o <http://www.ncdoj.com/consumerprotection>
 - v Do Not Call
 - o <http://www.nocallsnc.com>