



**Report to the Lieutenant Governor
and the Speaker of the House
of Representatives**

Texas No-Call List

***Public Utility Commission of Texas
December 2012***

TABLE OF CONTENTS

I.	INTRODUCTION	2
II.	OVERVIEW OF TEXAS NO-CALL LIST REQUIREMENTS	2
III.	NUMBER OF PHONE NUMBERS REGISTERED, NUMBER OF LISTS DISTRIBUTED, AND AMOUNTS COLLECTED	3
A.	PHONE NUMBERS REGISTERED ON NO-CALL LIST	3
B.	DISTRIBUTION	4
C.	AMOUNTS COLLECTED	4
IV.	COMPLAINTS	4
A.	TEXAS NO-CALL COMPLAINTS	4
B.	FACSIMILE SOLICITATION COMPLAINTS	5
C.	INTERFERENCE WITH CALLER ID SERVICE COMPLAINTS	5
V.	ENFORCEMENT	5
A.	COOPERATION WITH THE ATTORNEY GENERAL	6
B.	COMMISSION PROCESSES FOR TELEMARKETING (INCLUDING NO-CALL) INVESTIGATIONS AND ENFORCEMENT	6
VI.	LEGISLATIVE RECOMMENDATIONS	6

I. INTRODUCTION

In 2001, the 77th Legislature created the Texas No-Call List by adoption of the Texas Telemarketing Disclosure and Privacy Act (Act). The Act required the Public Utility Commission of Texas (Commission) to “provide for the operation of a database to compile a list of names, addresses, and telephone numbers of consumers in this state who object to receiving unsolicited telemarketing or telephone calls.”¹ The Act applies on a statewide basis to all telemarketers operating in Texas.

This report is filed pursuant to § 304.201 of the Texas Business and Commerce Code, which requires the Commission to provide a report to the lieutenant governor and speaker of the house of representatives on the Texas No-Call List on or before December 31 of each even-numbered year to report the following information for the two-year period ending on August 31 of that year:

- 1) a statement of the number of telephone numbers included on the Texas No-Call List, the number of lists distributed to telemarketers, and the amount collected from telemarketers for those requests and for distribution;
- 2) a list of complaints received by the Commission concerning activities regulated by this chapter² itemized by type;
- 3) a summary of any enforcement efforts made by the Commission; and
- 4) the Commission’s recommendations for any changes in the enabling legislation.

The reporting period for this report is from September 1, 2010 through August 31, 2012.

II. OVERVIEW OF TEXAS NO-CALL LIST REQUIREMENTS

The Texas No-Call List applies to all telemarketers, including Retail Electric Providers, calling a Texas residential or wireless number. The Texas No-Call List must contain telephone numbers of each consumer who has registered for the list. Wireless phone numbers became eligible to be added to the No-Call List on September 1, 2003. The Texas No-Call List is updated and republished on January 1, April 1, July 1, and October 1 of each year.

Since September 24, 2004, online registration for the Texas No-Call List has been free. Consumers registering by phone or by mail must pay a registration fee of \$2.25 for each residential or wireless phone number added to the list. Texas businesses can register for the Electric No-Call List at a cost of \$2.55. Registered phone numbers remain on the list for three years. Consumers who provide an email address when they register for the Texas No-Call list are notified when their registration is about to expire. Registration for phone numbers may be

¹ TEX. BUS. & COM. CODE § 304.051 (Vernon Supp. 2006).

² The activities regulated under Chapter 304 of the Texas Business and Commerce Code are: 1) no call complaints, 2) facsimile solicitation complaints, and 3) complaints concerning interference with Caller Identification service.

renewed for successive three-year periods. A consumer may request deletion of his or her telephone number from the list in writing at any time.

The 79th Legislature enacted House Bill 210, which affected the Texas No-Call List in several ways. HB 210 re-defined the Texas No-Call List to include the names and telephone numbers of all consumers who have registered for the Texas No-Call List as well as the names and telephone numbers of all Texas consumers who have registered for the National Do Not Call Registry. This amendment enables the Commission to pursue enforcement under state law on behalf of any Texas resident that is improperly solicited regardless of whether the Texas resident had initially registered on the Texas No-Call List or the National Do Not Call Registry. HB 210 also allowed the Commission or its designee to share information on the Texas No-Call List with the administrator of the National Do Not Call Registry and permitted the names and telephone numbers on the Texas No-Call List to be placed on the National Do Not Call Registry. Finally, HB 210 codified free Internet registration for the Texas Do Not Call List, excepted from public disclosure under the Texas Public Information Act any information provided to or received from the administrator of the National Do Not Call Registry and amended Public Utility Regulatory Act § 39.1025 to reflect that the Electric No-Call List would apply only to nonresidential customers.

By statute,³ the Texas No-Call List restrictions do not apply to telemarketers contacting consumers:

- with whom they have an established business relationship;
- if the consumer requests the contact;
- if the call is between a telemarketer and a business, other than by a facsimile solicitation, unless the business informed the telemarketer that the business does not wish to receive telemarketing calls from the telemarketer;
- to collect a debt;
- on behalf of a non-profit organization or charity, provided the call does not meet the definition of a “telephone solicitation” by attempting to make a sale or gather information that will lead to a sale; or
- if the telemarketer is a state licensee (*i.e.*, insurance or real estate agent, etc.) and:
 - the call is not made by an automated dialing device;
 - the solicited transaction is completed with a face-to-face presentation to finalize a sales transaction and make payment; and
 - the consumer has not previously told the licensee that the consumer does not wish to be called.

III. NUMBER OF PHONE NUMBERS REGISTERED, NUMBER OF LISTS DISTRIBUTED, AND AMOUNTS COLLECTED

A. Phone Numbers Registered on No-Call List

From September 1, 2010 through August 31, 2012, there were 239,151 telephone numbers submitted to the Texas No-Call List of which 87,836 were registration renewals.

³ TEX. BUS. & COM. CODE §304.004 (2-5) (Vernon Supp. 2006).

Since the inception of the Texas No-Call List in April 2002 through August 31, 2010, a total of 1,740,962 numbers have been registered on the list.

B. Distribution

Pursuant to P.U.C. SUBST. R. 26.37, telemarketers are required to purchase the Texas No-Call List. During the reporting period, 2,461 No-Call Lists were purchased by telemarketers. As noted in the 2010 Texas No-Call report, 2,598 lists were purchased from September 1, 2008-August 31, 2010.

The Texas No-Call List is updated on a quarterly basis. Telemarketers that subscribe to the list have 60 days from the date the list is revised to update their internal databases and to stop calling customers who have registered in the database.

C. Amounts Collected

The Commission was not appropriated funds to operate the Texas No-Call List and, therefore, relies on consumer fees and distribution fees to operate the registry. State law allows the Commission to charge a reasonable amount not to exceed \$3, for a request to place a telephone number on the list or to renew an entry on the list. During the reporting period the registration fee was \$2.25 per registered residential or wireless telephone number. Texas businesses can register for the Electric No-Call list at a cost of \$2.55. Since September 24, 2004, online registration for the Texas No-Call List has been free. In addition, the Commission may charge a fee, not to exceed \$75, to distribute the Texas No-Call List to telemarketers. During the reporting period, a quarterly fee of \$75 applied to telemarketers requesting the current version of the published Texas No-Call List. Telemarketers may also choose to receive a geographically customized list from the Texas No-Call List database for a charge of \$75 per quarter. All fees collected for registration and distribution of the Texas No-Call List go directly to the database administrator to cover the costs associated with operating the list.

- **Total Amount Collected from Telemarketers** **\$184,275.00**
- **Total Amount Collected from Customers Who Registered in FY11-12** **\$ 8,510.85**

IV. COMPLAINTS

A. Texas No-Call Complaints

Consumers may file complaints for violations of the Texas No-Call List with the Customer Protection Division (CPD) of the Commission. Consumers may file complaints by phone, fax, mail, or email, or through a complaint form available online at <http://www.puc.state.tx.us/ocp/complaints/filing.cfm>. Consumers can also file complaints with the Office of the Attorney General of the State of Texas (OAG).

Typically, if the Commission receives a complaint via telephone, Commission Staff asks questions to elicit the necessary company contact information. However, in some instances,

complainants were unable to provide sufficient information because, for example, they did not answer the call or failed to remember the specifics of their conversation with the telemarketer. No further action was taken on complaints with insufficient company contact information.

From September 1, 2010 through August 31, 2012, the Commission received 11,172 consumer complaints related to the Texas No-Call List. The Commission received 55% more complaints than were received over the previous reporting period of FY 2008-2010.

B. Facsimile solicitation complaints

During the reporting period the Commission received 76 consumer complaints regarding facsimile (fax) solicitations. All of the fax solicitation complaints were referred to the OAG.

C. Interference with caller ID service complaints

During the reporting period, the Commission received 32 complaints concerning interference with Caller ID service. Pursuant to TEX. BUS. & COMM. CODE §304.151, telemarketers may not block the identity of the telephone number from which the telephone call is made to evade devices designed to identify telephone callers. All of these complaints were referred to the OAG.

V. ENFORCEMENT

Chapter 304 of the Business and Commerce Code authorizes the Commission to investigate companies and assess administrative penalties for violations of that chapter except those involving licensees of other state agencies.⁴ Additionally, Chapter 304 authorizes the Office of the Attorney General (OAG) to investigate complaints and file civil enforcement actions seeking injunctive relief, attorneys' fees and civil penalties for violations involving all entities except state licensees and telecommunications providers.⁵

Potential telemarketing violations under Chapter 304 of the Business and Commerce Code include Texas No-Call List violations, facsimile solicitation violations, and interference with caller ID service violations.

⁴ While the Commission does not have jurisdiction over other state licensees violating the Texas No-Call List, those agencies issuing licenses to violators may initiate enforcement proceeding. Section 304.253 (a) of the Texas Business and Commerce Code provides that "[a] state agency that issues a license to a state licensee shall receive and investigate complaints concerning violations of Subchapters B and C by the state licensee."

⁵ TEX. BUS. & COM.CODE §304.252 (Vernon Supp. 2010)

A. Cooperation with the Attorney General

The Commission and the OAG have concurrent jurisdiction to handle No-Call List, facsimile solicitation, and interference with caller ID service violations in cases where the violator is not licensed by another Texas state agency or is a telecommunications provider. The Commission and OAG cooperate on these potential violations pursuant to a Memorandum of Understanding (MOU). Under this MOU, the Commission and OAG have agreed to cooperate, assist one another, and share information regarding these potential violations. Staff from the Commission communicate and coordinate regularly with the OAG Staff on Texas No-Call enforcement issues.

The Commission provides the OAG with a monthly summary of all telemarketing complaints, including the No-Call List complaints. The facsimile solicitation complaints and the interference with caller ID service complaints were referred to the OAG.

B. Commission processes for telemarketing (including the No-Call list) investigations and enforcement

Using the Customer Protection Division database, the Commission Staff runs queries each quarter to identify the number of Texas No-Call complaints for that quarter. For each of the companies having met the threshold for No-Call complaints in a quarter, the Commission Staff opens an investigation and determines which companies are located out of state or are licensed by another Texas state agency. Many companies that are located out of state have been referred to the OAG, and those that are licensed by another agency are referred to that agency.

For those located within Texas and not licensed by another agency, the Commission Staff investigates to determine the status and history of the company for the Texas No-Call complaints for the current quarter and past quarters. Based on the results of this analysis, the Commission Staff may send the company an information letter regarding Texas No-Call laws and rules, investigate whether the company has purchased the required No-Call list, or flag the company for additional review and potential enforcement action.

For the period of 09/01/2010 through 08/31/2012, twelve No-Call investigations were opened by Commission Staff. Of these twelve, two were referred to the OAG, five resulted in warning letters, and one resulted in Commission Staff issuing a Notice of Violation. Additionally, two companies were unable to be located and two were found to be in full compliance.

VI. LEGISLATIVE RECOMMENDATIONS

The Commission has no legislative recommendations at this time.