

# FTC Sues DISH Network for Violating ‘Do-Not-Call’ Rules in Telemarketing

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The FTC recently sued satellite television service operator DISH Network in federal district court in Illinois for violations of the Telemarketing and Consumer Fraud and Abuse Act. The agency claims DISH violated “company-specific do-not-call rules” – in other words, the FTC claims that DISH called consumers who had previously asked DISH not to call them again. DISH disputes the FTC’s claims.

Under the FTC (and FCC’s) telemarketing rules, there are two do-not-call regimes. First is the national do-not-call registry. With certain exceptions, telemarketers and sellers may not telemarket to residential phone lines and wireless numbers unless they have first “scrubbed” their calling lists against the federal do-not-call registry. The exceptions include calling customers with whom an organization has an “existing business relationship” or who have given prior consent for the calls. However, even those customers to whom telemarketing calls might be permitted because of an existing business relationship or other reasons can always ask a telemarketer not to call again and to put the consumer on the company-specific do-not-call list. This company-specific request must be implemented promptly and maintained for five years.

This part of the federal telemarketing rules thus puts the power in the hands of the consumer who can decide if he or she wishes to receive telephone solicitations from a particular company. It does not matter if the consumer continues to do business with a particular seller – once the consumer asks not to be called again, telemarketing must cease.

The FTC’s complaint against DISH contends that, since September 2007, DISH had initiated – either on its own or through outside telemarketers working on its behalf –millions of outbound telephone calls to phone numbers of people who previously indicated that they did not want to receive telemarketing calls from DISH. The complaint seeks civil penalties and a permanent injunction to stop DISH from future violations of the telemarketing rules.

Indeed, the penalties could be steep. For violations before February 9, 2009, the specified penalties are \$11,000 per violation. Those penalties were increased to \$16,000 for each violation of the FTC’s Telemarketing Sales Rule occurring after that date. DISH is already litigating against the Department of Justice in another case for allegedly calling consumers on the national do-not-call registry or purportedly causing its dealers to make calls to those consumers. It was information developed in that litigation that led to this latest complaint, according to the FTC’s public statements.

Of course, various defenses are available to DISH and others facing similar lawsuits or enforcement actions. These defenses include the possibility that a number called was a business (rather than residential) telephone number; or that the company-specific do-not-call request had not been made to DISH in the first place. Written consent to receive telemarketing calls provided after a company-specific do-not-call request would also allow such calls prospectively (at least until the consent were revoked subsequently).

Companies engaging in telemarketing – either on their own or through outside telemarketing firms, affiliated dealers, or other third parties – should take note that the FTC is continuing to enforce its do-not-call rules. FTC Chairman Jon Leibowitz stated that the agency will continue to enforce the do-not-call rules “to protect consumers’ right to be left alone in the privacy of their own homes.”

While the FTC (and the FCC) have focused on compliance with the federal registry requirements, this latest case against DISH demonstrates that the agency will also initiate enforcement action against those it contends to be violating the “company-specific” do-not-call requirements. Companies using telemarketing should review their written and operational policies to ensure compliance with both the federal and company-specific do-not-call requirements. Customer service representatives, in particular, should receive periodic training that when a consumer says, “No more calls,” no really does mean, “No more, Mr. Telemarketer, you’re done.”

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