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DO-NOT-CALL REGISTRY FEE COLLECTION EXTENSION

R E P O R T

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ON

S. 781

DECEMBER 12, 2007.—Ordered to be printed

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SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED TENTH CONGRESS

FIRST SESSION

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DECEMBER 12, 2007.—Ordered to be printed

Mr. INOUYE, from the Committee on Commerce, Science, and Transportation, submitted the following

REPORT

[To accompany S. 781]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (S. 781) to extend the authority of the Federal Trade Commission to collect Do-Not-Call Registry fees to fiscal years after fiscal year 2007, having considered the same, reports favorably thereon with an amendment (in the nature of a substitute) and recommends that the bill (as amended) do pass.

PURPOSE OF THE BILL

S. 781, as amended, would provide the Federal Trade Commission (FTC) the authority to continue collecting fees to continue administering the Do-Not-Call (DNC) Registry after fiscal year (FY) 2007. The Do-Not-Call Implementation Act (DNC Act) specified that the FTC may only collect fees through 2007. S. 781 would extend the authority of the FTC to collect DNC Registry fees beyond 2007.

BACKGROUND AND NEEDS

On March 11, 2003, President George W. Bush signed the DNC Act into law. The DNC Act makes it illegal for telemarketers to call consumers with whom they did not have a prior business relationship. It also limits the times of day when telemarketers can call, the use of auto-dialing technology, and the area codes accessible to telemarketers. The enforcement provisions of the DNC Act include severe fines for calling numbers on the DNC Registry, and the Act requires telemarketers to keep their own in-house call lists up-to-date with the DNC Registry.

69–010

The FTC opened the DNC Registry on June 27, 2003, and telemarketers were required to comply by October 1, 2003. Nearly 5,000 telemarketers purchased all or parts of the list and removed the phone numbers on the DNC Registry.

A telemarketer who ignores the DNC list is subject to an $11,000 fine for each call to a phone number on the DNC Registry. The fine is levied by the FTC; no private right of action is available to individual consumers or State attorneys general. The law requires telemarketers to search the registry and synchronize their call lists on a regular basis. The registry has logged more than 144 million telephone numbers since its inception.

The DNC Act also directed the FTC to use fees collected pursuant to the DNC Act as an offset to FTC appropriations for the FY 2003 through FY 2007. Each year, Congress directs the FTC to raise a certain amount of money from the DNC fees. The FTC's FY 2008 budget proposal assumes an offset of $19 million from DNC fees. Based on the Congressional offset direction, the FTC adjusts its fees. Over the past several years, the fee to telemarketers to access the DNC list has risen substantially from $7,375 for the entire registry in 2003 to $17,050 in 2006. In addition, the FTC does not charge for registry information on five or fewer area codes. In FY 2006, 58,816 entities accessed five or fewer area codes for free. In FY 2006, to gain access to the DNC Registry, 6,824 entities paid a combined total of approximately $22 million in fees.

In its Annual Report to Congress for FY 2006, the FTC stated that the DNC Registry was effectively serving its fundamental purpose by maintaining high registration volumes and reducing unwanted phone calls from telemarketers. The Commission also concluded that the registry was successfully recording consumer complaints and consumer preferences to avoid telemarketing phone calls, permitting businesses to access the registry, and sharing information and tools with state and federal law enforcement personnel so that they could conduct investigations into complaints and take appropriate action. In short, the FTC affirmed in its report to Congress that the DNC Registry constitutes an effective consumer protection program.

The Report underscored other issues reflecting the program's efficacy. Concerning agency harmonization, in 2006, the FTC coordinated closely with the Federal Communications Commission (FCC) to share enforcement priorities and avoid duplicative action. Regarding consolidation and efficiency, the FTC worked with States to advance its objective of forming a single registry to provide businesses and consumers with a single point of contact. Finally, concerning enforcement, while compliance with the DNC Registry was high, the FTC continued to prosecute violators of the DNC Act and worked closely with the Department of Justice, the FCC, and the individual States. With the fee collection authority ending in FY 2007, S. 781 is needed to authorize and stabilize the fee structure of the Registry.

SUMMARY OF PROVISIONS

S. 781 would mandate the FTC to assess and collect an annual fee to implement and enforce the DNC Registry as currently provided for by rule and by any other regulation issued by the Com-

mission under section 3 of the Telemarketing and Consumer Fraud and Abuse Prevention Act (15 U.S.C. 6102).

Under the bill, the FTC would access annual fees that are equal to or less than $54 for each area code of data accessed or $14,850 to access every area code of data in the registry. According to the FTC, these levels would generate approximately $19 million in fees. No telemarketing firm would be permitted to enter into or participate in an arrangement to share any fee with another firm or a client.

Fees would be adjusted for inflation by the Consumer Price Index (CPI). The fees would be increased as needed by multiplying the fees set in the Act by the percentage (if any) by which the CPI for the most recently ended 12-month period ending June 30 exceeds the baseline CPI. The term "baseline CPI" would be defined as the CPI for the 12-month period ending June 30, 2008. The FTC would be required to publish the adjustments in the Federal Register. The FTC could not charge a fee to any person for accessing the first 5 area codes of data or for persons permitted but not required to access the registry. However, the FTC could charge an additional fee for accessing additional data during an annual period. If a person wishes to access additional data during an annual period for which a fee has already been paid for prior data access, an additional fee would be required to be assessed. If the additional data is assessed during the first 6 months of an annual period, the fee would be $54 for each area code of data. If the additional data is accessed after the first 6 months of the annual period, the fee would be $27 for each area code of data.

S. 781 would change the annual reports required by the DNC Act from annual to biennial reports, and would provide the FTC the ability to issue rules as necessary to carry out the amendments to the DNC Act as required by S. 781.

LEGISLATIVE HISTORY

On March 6, 2007, Senator Pryor introduced S. 781, which was referred to the Committee on Commerce, Science, and Transportation (Committee). Vice Chairman Stevens and Senator Rockefeller cosponsored the measure. On April 10, 2007, all five FTC Commissioners testified before the Committee on several issues as part of general oversight of the Commission, and included testimony on the DNC Registry and the need for renewed fee authorization. On July 31, 2007, the Committee held a hearing on telemarketing practices and received testimony on S. 781.

On August 2, 2007, the Committee met in open executive session to consider an amendment in the nature of a substitute offered by Senator Pryor and Chairman Inouye that made several substantive changes to the bill as introduced. The Committee adopted the Pryor-Inouye substitute amendment to the bill by voice vote and ordered the bill reported favorably with the amendment in the nature of a substitute.

ESTIMATED COSTS

In accordance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate and section 403 of the Congressional Budget

Act of 1974, the Committee provides the following cost estimate, prepared by the Congressional Budget Office:

SEPTEMBER 27, 2007.

Hon. DANIEL K. INOUYE,
Chairman, Committee on Commerce, Science, and Transportation, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 781, the Do-Not-Call Registry Fee Extension 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.

S.781—Do-Not-Call Registry Fee Extension Act of 2007

Summary: S. 781 would authorize the Federal Trade Commission (FTC) to continue to collect and spend fees to operate and enforce the "do-not-call" registry. The registry contains a list of consumers who telemarketing firms are prohibited from calling because the consumers have notified the FTC that they do not wish to receive such calls. The bill also would require the FTC to prepare two reports about the use and effectiveness of the registry.

Based on information from the FTC, CBO estimates that the FTC would collect a total of $107 million under the bill over the 2008–2012 period and spend $105 million over that period, assuming appropriation actions consistent with the bill. Over the five-year period, CBO estimates that implementing S. 781 would decrease net spending subject to appropriation by $2 million. Enacting S. 781 would not affect direct spending or revenues.

S. 781 contains no intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would not affect the budgets of state, local, or tribal governments.

S. 781 would impose a private-sector mandate, as defined in UMRA, by making permanent the authority of the FTC to collect fees from telemarketing firms. CBO expects that the costs of that mandate would fall below the annual threshold established in UMRA for private-sector mandates ($131 million, adjusted annually for inflation).

Estimated cost to the Federal Government: The estimated budgetary impact of S. 781 is shown in the following table. The costs of this legislation fall within budget function 370 (commerce and housing credit).

	By fiscal year, in millions of dollars—				
	2008	2009	2010	2011	2012
CHANGES IN SPENDING SUBJECT TO APPROPRIATION					
Gross FTC Spending for the Do-Not-Call Registry:					
Estimated Authorization Level	21	21	21	22	22
Estimated Outlays	19	21	21	22	22
Offsetting Collections from Telemarketers:					
Estimated Authorization Level	−21	−21	−21	−22	−22
Estimated Outlays	−21	−21	−21	−22	−22
Net Changes to FTC Spending for the Do-Not-Call Registry:	0	0	0	0	0
Estimated Authorization Level	0	0	0	0	0

	By fiscal year, in millions of dollars—				
	2008	2009	2010	2011	2012
Estimated Outlays	−2	0	0	0	0

Basis of estimate: S. 781 would authorize the FTC to collect fees sufficient to operate and enforce the "do-not-call" registry, contingent on approval of the fees in annual appropriation acts. For this estimate, CBO assumes that S. 781 and the necessary appropriation provisions will be enacted early in fiscal year 2008. In 2006, the FTC incurred costs of about $19 million and collected fees of approximately $22 million to operate and enforce the "do-not-call" registry; CBO expects that collections and spending in 2007 will be similar.

The bill would set fees for firms that wish to subscribe to the registry at rates lower than the FTC is currently charging. Based on information from the commission, CBO expects that the lower fees authorized by the bill would still be sufficient to cover the costs of operating the registry. CBO estimates that the FTC would collect $107 million over the 2008–2012 period and spend $105 million, assuming the necessary appropriation actions. Over the five-year period, CBO estimates that implementing S. 781 would result in a reduction of $2 million in net spending subject to appropriation.

CBO estimates that the cost of preparing two reports for the Congress regarding the effectiveness of the registry would be less than $500,000, subject to the availability of appropriated funds.

Estimated impact on state, local, and tribal governments: S. 781 contains no intergovernmental mandates as defined in UMRA and would not affect the budgets of state, local, or tribal governments.

Estimated impact on the private sector: S. 781 would amend the Do-Not-Call Implementation Act (Public Law 108–10) to make permanent the authority of the FTC to collect fees in order to implement and enforce the "Do-Not-Call" registry. The authority to collect those fees is set to expire at the end of fiscal year 2007. Under current law, telemarketing firms are required to periodically update their phone number databases to reflect the updated list of numbers that are added to the "Do-Not-Call" list. The bill would permanently extend the authority of the FTC to collect fees from those firms for using this list. The duty on telemarketing firms to pay those fees would constitute a new mandate. CBO estimates that extending the fees would amount to approximately $107 million over the next five years. Consequently, the costs of the mandate would fall below the annual threshold established by UMRA for private-sector mandates ($131 million, adjusted annually for inflation).

Estimate prepared by: Federal costs: Susan Willie; impact on state, local, and tribal governments: Elizabeth Cove; Impact on the private sector: Jacob Kuipers.

Estimate approved by: Peter H. Fontaine, Assistant Director for Budget Analysis.

Regulatory Impact Statement

In accordance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee provides the following evaluation of the regulatory impact of the legislation, as reported:

NUMBER OF PERSONS COVERED

The authority to collect fees for the DNC Registry would guarantee the availability of the DNC Registry for every person with a telephone number that could be contacted by telemarketer not covered by the exceptions within the Telemarketing Sales Rule. Telemarketers would have to continue purchasing and scrubbing consumer telephone numbers that are on the DNC Registry.

ECONOMIC IMPACT

S. 781 would stabilize the annual fees charged to the telemarketing industry and adjust the fee increases for inflation. The Committee would expect the legislation to provide cost certainty for the telemarketing industry, thereby providing a net economic benefit over the current fee system.

PRIVACY

S. 781 would increase the privacy of consumers by assuring the continuation of the DNC Registry.

PAPERWORK

It is expected that the legislation would not increase the paperwork requirements beyond what is currently required to comply with the DNC Registry.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title

The Act may be cited as the "Do Not Call Registry Fee Extension Act of 2007."

Section 2. Fees for access to registry

The section would amend section 2 of the DNC Act. The FTC would be mandated to assess and collect an annual fee to implement and enforce the DNC Registry as currently provided for by rule and by any other regulation issued by the FTC under section 3 of the Telemarketing and Consumer Fraud and Abuse Prevention Act (15 U.S.C. 6102).

Annual Fees. The FTC would set annual fees that are equal to $54 for each area code of data accessed, or $14,850 to access every area code of data in the DNC Registry. The FTC would not be able to charge a fee to any person for accessing the first 5 area codes of data or for persons permitted to but not required to access the registry.

Duration of Access. Each person who pays the annual fee for access to the registry would be allowed access to the area codes paid for by that fee for the annual period. As defined by this section, the term "annual period" would mean the 12-month period beginning on the first day of the month in which a person pays a fee for access to the registry.

Additional Fees. If a person wishes to access additional data during an annual period for which a fee has already been paid for prior data access, the FTC would assess an additional fee. If the additional data is assessed during the first 6 months of an annual period, the fee would be $54 for each area code of data. If the addi-

tional data is accessed after the first 6 months of the annual period, the fee would be $27 for each area code of data.

Adjustment of Fees. Fees would be adjusted for inflation based on the CPI. The fees would be increased as needed by multiplying the fees set in the Act by the percentage (if any) by which the CPI for the most recently ended 12-month period ending June 30 exceeds the baseline CPI. The FTC would publish the adjustments in the Federal Register. The FTC would not adjust the fees if the change in CPI were less than 1 percent. As defined by this section, the term "baseline CPI" would mean the CPI for the 12-month period ending June 30, 2008.

Prohibition Against Fee Sharing. No telemarketing firm would be permitted to enter into or participate in an arrangement to share any fee with another firm or a client.

Handling of Fees. The FTC would be mandated to deposit and credit as offsetting collections any fee collected under this section in the Federal Trade Commission Salaries and Expenses account and appropriated funds would remain available until expended. No amount would be collected as a fee under this section for any fiscal year except to the extent provided in advance by appropriations Acts.

Section 3. Reports

Starting in 2009, the FTC would issue reports to the Congress on the DNC Registry on a biennial basis.

Section 4. Rulemaking

The FTC would be authorized to issue rules as necessary to carry out the amendments to the DNC Act made by S. 781.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new material is printed in italic, existing law in which no change is proposed is shown in roman):

DO-NOT-CALL IMPLEMENTATION ACT

SEC. 2. TELEMARKETING SALES RULE; DO-NOT-CALL REGISTRY FEES.

[15 U.S.C. 6101]

[The Federal Trade Commission may promulgate regulations establishing fees sufficient to implement and enforce the provisions relating to the "do-not-call" registry of the Telemarketing Sales Rule (16 CFR 310.4(b)(1)(iii)), promulgated under the Telemarketing and Consumer Fraud and Abuse Prevention Act (15 U.S.C. 6101 et seq.). Such regulations shall be promulgated in accordance with section 553 of title 5, United States Code. Fees may be collected pursuant to this section for fiscal years 2003 through 2007, and shall be deposited and credited as offsetting collections to the account, Federal Trade Commission—Salaries and Expenses, and shall remain available until expended. No amounts shall be collected as fees pursuant to this section for such fiscal years except to the extent provided in advance in appropriations Acts. Such amounts shall be available for expenditure only to offset the costs

of activities and services related to the implementation and enforcement of the Telemarketing Sales Rule, and other activities resulting from such implementation and enforcement.]

(a) IN GENERAL.—The Federal Trade Commission shall assess and collect an annual fee pursuant to this section in order to implement and enforce the "do-not-call" registry as provided for in section 310.4(b)(1)(iii) of title 16, Code of Federal Regulations, or any other regulation issued by the Commission under section 3 of the Telemarketing and Consumer Fraud and Abuse Prevention Act (15 U.S.C. 6102).

(b) ANNUAL FEES.—

(1) IN GENERAL.—The Commission shall charge each person who accesses the "do-not-call" registry an annual fee that is equal to the lesser of—

(A) $54 for each area code of data accessed from the registry; or

(B) $14,850 for access to every area code of data contained in the registry.

(2) EXCEPTION.—The Commission shall not charge a fee to any person—

(A) for accessing the first 5 area codes of data; or

(B) for accessing area codes of data in the registry if the person is permitted to access, but is not required to access, the "do-not-call" registry under section 310 of title 16, Code of Federal Regulations, section 64.1200 of title 47, Code of Federal Regulations, or any other Federal regulation or law.

(3) DURATION OF ACCESS.—

(A) IN GENERAL.—The Commission shall allow each person who pays the annual fee described in paragraph (1), each person excepted under paragraph (2) from paying the annual fee, and each person excepted from paying an annual fee under section 310.4(b)(1)(iii)(B) of title 16, Code of Federal Regulations, to access the area codes of data in the "do-not-call" registry for which the person has paid during that person's annual period.

(B) ANNUAL PERIOD.—In this paragraph, the term 'annual period' means the 12-month period beginning on the first day of the month in which a person pays the fee described in paragraph (1).

(c) ADDITIONAL FEES.—

(1) IN GENERAL.—The Commission shall charge a person required to pay an annual fee under subsection (b) an additional fee for each additional area code of data the person wishes to access during that person's annual period.

(2) RATES.—For each additional area code of data to be accessed during the person's annual period, the Commission shall charge—

(A) $54 for access to such data if access to the area code of data is first requested during the first 6 months of the person's annual period; or

(B) $27 for access to such data if access to the area code of data is first requested after the first 6 months of the person's annual period.

(d) ADJUSTMENT OF FEES.—

(1) IN GENERAL.—

(A) FISCAL YEAR 2009.—The dollar amount described in subsection (b) or (c) is the amount to be charged for fiscal year 2009.

(B) FISCAL YEARS AFTER 2009.—For each fiscal year beginning after fiscal year 2009, each dollar amount in subsection (b)(1) and (c)(2) shall be increased by an amount equal to—

(i) the dollar amount in paragraph (b)(1) or (c)(2), whichever is applicable, multiplied by

(ii) the percentage (if any) by which the CPI for the most recently ended 12-month period ending on June 30 exceeds the baseline CPI.

(2) ROUNDING.—Any increase under subparagraph (B) shall be rounded to the nearest dollar.

(3) CHANGES LESS THAN 1 PERCENT.—The Commission shall not adjust the fees under this section if the change in the CPI is less than 1 percent.

(4) PUBLICATION.—Not later than September 1 of each year the Commission shall publish in the Federal Register the adjustments to the applicable fees, if any, made under this subsection.

(5) DEFINITIONS.—In this subsection:

(A) CPI.—The term "CPI" means the average of the monthly consumer price index (for all urban consumers published by the Department of Labor).

(B) BASELINE CPI.—The term "baseline CPI" means the CPI for the 12-month period ending June 30, 2008.

(e) PROHIBITION AGAINST FEE SHARING.—No person may enter into or participate in an arrangement (as such term is used in section 310.8(c) of the Commission's regulations (16 C.F.R. 310.8(c))) to share any fee required by subsection (b) or (c), including any arrangement to divide the costs to access the registry among various clients of a telemarketer or service provider.

(f) HANDLING OF FEES.—

(1) IN GENERAL.—The commission shall deposit and credit as offsetting collections any fee collected under this section in the account "Federal Trade Commission—Salaries and Expenses", and such sums shall remain available until expended.

(2) LIMITATION.—No amount shall be collected as a fee under this section for any fiscal year except to the extent provided in advance by appropriations Acts.

* * * * * * *

SEC. 4. REPORTING REQUIREMENTS.

[15 U.S.C. 6101 note]

[(a) REPORT ON REGULATORY COORDINATION.—Within 45 days after the promulgation of a final rule by the Federal Communications Commission as required by section 3, the Federal Trade Commission and the Federal Communications Commission shall each transmit to the Committee on Energy and Commerce of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report which shall include—

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

[(2) any inconsistencies between the rules promulgated by each such 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.

[(b) ANNUAL REPORT.—For each of fiscal years 2003 through 2007, the Federal Trade Commission and the Federal Communications Commission shall each transmit an annual report to the Committee on Energy and Commerce of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report which shall include—

[(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 and enforcement of the "do-not-call" registry with the enforcement activities of the Federal Communications Commission pursuant to the Telephone Consumer Protection Act (47 U.S.C. 227 et seq.); and

[(6) a review of the enforcement proceedings under the Telemarketing Sales Rule (16 CFR 310), in the case of the Federal Trade Commission, and under the Telephone Consumer Protection Act (47 U.S.C. 227 et seq.), in the case of the Federal Communications Commission.]

(a) BIENNIAL REPORTS.—Not later than December 31, 2009, and biennially thereafter, the Federal Trade Commission, in consultation with the Federal Communications Commission, shall transmit a report to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Energy and Commerce that includes—

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

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

(3) the impact on the "do-not-call" registry of—

(A) the 5-year reregistration requirement;

(B) new telecommunications technology; and

(C) number portability and abandoned telephone numbers; and

(4) the impact of the established business relationship exception on businesses and consumers.

(b) ADDITIONAL REPORT.—Not later than December 31, 2009, the Federal Trade Commission, in consultation with the Federal Communications Commission, shall transmit a report to the Senate Committee on Commerce, Science, and Transportation and the

House of Representatives Committee on Energy and Commerce that includes—

(1) the effectiveness of do-not-call outreach and enforcement efforts with regard to senior citizens and immigrant communities;

(2) the impact of the exceptions to the do-not-call registry on businesses and consumers, including an analysis of the effectiveness of the registry and consumer perceptions of the registry's effectiveness; and

(3) the impact of abandoned calls made by predictive dialing devices on do-not-call enforcment.

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