House Memorial 24:
A Report on Telemarketing Regulation

by
Joseph Yar
Assistant Attorney General
New Mexico Attorney General's Office
and
Sandra Skogen
Staff Counsel
New Mexico Public Regulation Commission

House Memorial 24

HM 24 requested the NMAG and the PRC to:

- Study ways to enforce the federal Telemarketing and Consumer Fraud and Abuse Prevention Act
- Recommend state legislation to further protect New Mexico residents against deceptive and abusive telemarketing practices
- Report recommendations by 9/1/2015

Telemarketing

"a plan, program, or campaign which is conducted to induce the purchase of goods or services or a charitable contribution by use of one or more telephones and which involves more than one interstate call"

Federal Regulation of Telemarketing

- Do Not Call registry
- Telemarketing and Consumer Fraud and Abuse Prevention Act/ Telemarketing Sales Rule ("TSR")
- Telephone Consumer Protection Act/FCC Rules

Note: State law is not pre-empted

Do Not Call Registry

- For personal telephone numbers only (landline or cellular)
- Telemarketers pay fees to access the list
- Your number remains on the list until you remove it or it is disconnected
- Telemarketers must also maintain an internal do not call list

Do Not Call Exceptions

- Express written consent
- Established business relationship
- Charitable organizations

Do Not Call – Safe Harbor

- Establish written procedures for compliance
- Training
- Maintain an entity – specific do not call list
- Process to prevent calls to persons on current national or internal list
- Monitoring and enforcement process
- The call was made in error

Telemarketing Sales Rule

- Telemarketers must transmit caller ID
- Prompt disclosure of identity, purpose of call (to sell goods or services) the nature of goods or services being offered, and if the offering is a price, no purchase is necessary and a purchase or payment does not increase the chances of winning
- Cannot call outside of 8 a.m. to 9 p.m. without prior consent
- Misrepresentations prohibited
- No pre-recorded messages without the call recipient's prior signed written agreement and there is an opt-out mechanism
- No threats, intimidation, profane or obscene language
- No repeated calls with intent to annoy, abuse, or harass

Telephone Consumer Protection Act/ FCC Rules

- FCC rules overlap the FTC's Telemarketing Sales Rule to some degree
- Local telcos must provide an annual bill insert regarding the national do not call database
- Calls using automatic telephone dialing system or artificial or prerecorded voice are restricted, subject to prior consent, emergency, and other exceptions

FCC Robocall Order 6/18/15

- Action taken in response to a flood of consumer complaints and 19 petitions
- Closed perceived loopholes in FCC rules
- Confirmed that carriers and VoIP providers may implement call blocking for both individuals and businesses to stop unwanted robocalls
- Encouraged deployment of blocking that does not block emergency calls

Robocall Blocking

- NoMoRobo offers blocking for VoIP
- Android cell phones use Call Control
- 45 state attorneys general wrote a letter to AT&T, Verizon, CenturyLink, Sprint, and T-Mobile urging them to offer robocall blocking for landline and wireless phones

State Statutes

- Fraudulent Telemarketing
  - Criminal penalties
  - Knowingly or willfully engaging in telemarketing to or from a telephone located in New Mexico with the intent to embezzle or to obtain money, property, or anything of value by fraudulent pretenses, representation or promises
  - Penalties range from a petty misdemeanor to a third degree felony depending on the dollar amount involved
- Unfair Trade Practices Act
  - Civil statute; civil penalty up to $5,000
  - Repeats key elements of the TSR; confirms a political exception
  - Prohibition against using an automated telephone dialing or push button or tone activated address signaling system with a pre-recorded message to solicit persons to purchase goods or services unless there is an established business relationship

Enforcement

- Federal statutes are enforceable by the FTC/FCC, state attorneys general (or other authorized officer), and private rights of action

- State statutes are also enforceable by the NMAG