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**ATTORNEY GENERAL'S FINDING AFFIRMING THE 2021 NATIONAL DO NOT
CALL REGISTRY FOR NEVADA'S TELECOMMUNICATION SOLICITATION ACT**

Introduction

As discussed herein, the Attorney General finds that the part of the National Do Not Call Registry that relates to Nevada shall continue to be used as the registry for Nevada's Telecommunication Solicitation Act.

Background

In 2003, the Legislature enacted the Telecommunication Solicitation Act ("Act").¹ Also known as Nevada's Do Not Call law, the Act prohibits telephone solicitors ("telemarketers") from making unsolicited telephone calls for the sale of goods or services to a telephone number on Nevada's registry.² The Act also specifies that if the federal government establishes a single national database of telephone numbers of persons who request not to receive unsolicited telephone calls for the sale of goods or services ("National Do Not Call Registry" or "National Registry"), the Attorney General shall examine that registry and the federal law relating to that registry for the purposes of the Act. Based on this examination, the Attorney General may issue a finding that:

1. The part of the National Registry that relates to Nevada is adequate to serve as the registry for the purposes of the Act; and

¹ Nev. Rev. Stat. §§ 228.500-.640.

² The Act prohibits most sales calls to registered Nevada telephone numbers. The Act still permits calls from political, religious, or tax-exempt charitable organizations that are made by actual employees or volunteers of those organizations, as well as debt collection calls, informational calls, and telephone survey calls. *Id.* §§ 228.530, .590(1). Permitted calls also include calls from telemarketers that have preexisting business relationships with the persons called within 18 months of the calls, assuming the telemarketers comply with applicable internal do not call registry and notice requirements. *Id.* § 228.600.

2. It is in the best interests of Nevada for the Attorney General to use the part of the National Registry that relates to Nevada for the purposes of the Act.³

If the Attorney General does not issue such a finding, the Act requires the Attorney General to establish and maintain a Nevada-specific registry, among other duties.⁴

In 2004, after the federal government created the National Registry for purposes of federal Do Not Call laws,⁵ the Attorney General found that the part of the National Registry that relates to Nevada should serve as Nevada's registry for purposes of the Act.⁶ Since then, the Attorney General has used the Nevada portion of the National Registry for purposes of enforcing the Act.

The Act also requires the Attorney General to periodically reexamine the National Registry and the federal law relating to that registry for the purposes of the Act. Based on this reexamination and an analysis of the applicable needs of Nevada, the Attorney General may rescind an earlier finding.⁷

Discussion

A. The part of the National Registry that relates to Nevada continues to be adequate to serve as the registry for purposes of the Act.

1. The National Registry serves the same purpose that a registry created by the Attorney General would serve; that is, the National Registry provides a list of telephone numbers of Nevadans (among other Americans) who have indicated they do not want to receive telemarketing calls for purposes of Do Not Call law compliance and enforcement. Although there are slight substantive differences between the Act and federal Do Not Call laws,⁸ the purpose for a registry containing telephone numbers of Nevadans is the same.

³ *Id.* § 228.540(1).

⁴ *Id.* §§ 228.550, .560(b)-(d), .580.

⁵ *E.g.*, 15 U.S.C §§ 6151-6155, 47 U.S.C. § 227(c), 16 C.F.R. §§ 310.4(b), .6-.8, 47 C.F.R. § 64.1200(c)-(f).

⁶ Brian Sandoval, *Attorney General's Finding Adopting National Do-Not-Call Registry For Nevada*, Nevada Attorney General, 59 (Mar. 31, 2004), <http://ag.nv.gov/uploadedFiles/agnv.gov/Content/News/PR/Archive/2004pr.pdf>.

⁷ Nev. Rev. Stat. § 228.540(3).

⁸ The Act and federal Do Not Call laws generally prohibit and permit the same types of calls to registered telephone numbers. But given they are different laws, telemarketers can violate one law but not necessarily the other. For instance, both laws permit calls from political, religious, or tax-exempt charitable organizations; yet the Act permits those calls only when they are made by actual employees or volunteers of those organizations (as opposed to third parties retained by those organizations), unlike federal law. *Compare Id.* § 228.530(2)(f), *with* 16 C.F.R § 310.6(a). Moreover, the requirements for whether telemarketers can avail themselves of a preexisting business relationship exemption under both laws differ. For instance, the Act's preexisting business relationship exemption is not available for a telemarketer's affiliates or associates, unlike federal law. *Compare* Nev. Rev. Stat. § 228.600(5), *with* 16 C.F.R §§ 310.2(o), 310.4(b)(1)(iii)(B), 47 C.F.R. § 64.1200(f)(5)(ii), *and* Federal Trade Commission, *Do-Not-Call Registry Fee Extension Act of 2007 Federal Trade Commission Biennial Report to Congress Reporting on Fiscal Years 2012-2013*, Federal Trade Commission, 6, <https://www.ftc.gov/sites/default/files/documents/reports/national-do-not-call-registry-biennial-report-congress->

2. The National Registry offers free, convenient, and secure registration for Nevadans interested in placing their telephone numbers on that registry. Nevadans may register on the internet (www.donotcall.gov) by filling out a simple, secure form, and by confirming their registration in a subsequent email. Also, Nevadans may register by calling a toll-free number (1-888-382-1222, or for the hearing-impaired at 1-866-290-4236) from the telephone number they want to register. Registration information, whether online or via telephone, is provided in English and Spanish. Consumers may also easily verify their registration on the internet, or by calling a toll-free number.⁹
3. The National Registry is well-known and used by consumers, including Nevadans. As of September 30, 2021, the National Registry had 2,106,634 active registrations for Nevada area codes, and 244,302,202 million active registrations nationwide (which includes the telephone numbers of Nevadans who do not use Nevada area codes).¹⁰
4. The federal government abides by established processes to ensure the National Registry's list of telephone numbers is current, and hence, accurate. Once Nevadans have completed the registration process, their telephone numbers should automatically be reflected in the National Registry the next day. Also, if registered Nevadans request removal of their telephone numbers from the National Registry, those telephone numbers should be removed from the registry the following day.¹¹ Registrations also do not expire,¹² so there should be no data accuracy issues relating to updating the National Registry with expired and/or re-registered telephone numbers. Furthermore, abandoned or disconnected telephone numbers (but not telephone numbers that receive new area codes or that have been ported when consumers change telephone service providers) are removed from the National Registry on a monthly basis.¹³
5. The federal government has also implemented sound processes involving telemarketer access to the National Registry. For instance, telemarketers must provide certain information and meet the definition of organizations that may access the National Registry, as well as pay for access. Telemarketers must also certify they will only use

fiscal-years-2012-2013-pursuant-to-do-not-call/131223biennialdncrpt.pdf [hereinafter FTC Congressional Report]. Federal law also provides a “safe harbor” defense for telemarketers, but not the Act. 16 C.F.R. § 310.4(b)(3), 47 C.F.R. § 64.1200(c)(2)(i). Regardless of any slight substantive differences, the Attorney General does not believe the differences would cause Nevadans to register their telephone numbers for only one registry but not the other, should two registries exist.

⁹ Federal Trade Commission, *Consumer Information National Do Not Call Registry*, Federal Trade Commission, <http://www.consumer.ftc.gov/articles/0108-national-do-not-call-registry> (last accessed June 3, 2022) [hereinafter FTC Consumer Information].

¹⁰ Federal Trade Commission, *National Do Not Call Registry Data Book FY 2021*, Federal Trade Commission, pgs. 8, 5 (Nov, 2021), https://www.ftc.gov/system/files/documents/reports/national-do-not-call-registry-data-book-fiscal-year-2021/dnc_data_book_2021.pdf

¹¹ FTC Consumer Information, *supra* note 9.

¹² 15 U.S.C. § 6155.

¹³ FTC Consumer Information, *supra* note 9; FTC Congressional Report, *supra* note 8, at 5.

the telephone numbers on the National Registry to comply with federal Do Not Call laws, or to prevent calls to telephone numbers on the National Registry.¹⁴ Furthermore, telemarketers are required to update their versions of the National Registry at least every 31 days. The federal government also provides access to the registry to exempt organizations (such as charities) that are not required to comply with federal Do Not Call laws, but voluntarily access the National Registry to avoid calling consumers who do not wish to receive calls from them.¹⁵

6. In addition, the Attorney General has found use of the Nevada portion of the National Registry for purposes of the Act to be adequate to date, and is not aware of issues that would change this. For example, no material issues have arisen from using the National Registry as it relates to Act enforcement. The Attorney General is not aware of the National Registry suffering from data security breaches. Also, the Attorney General anticipates that the National Registry will remain in existence for the foreseeable future.

B. It is in the best interests of Nevada for the Attorney General to continue to use the part of the National Registry that relates to Nevada as the registry for purposes of the Act.

1. In light of the National Registry containing telephone numbers of Nevadans who wish to not receive telemarketing calls, an additional registry created by the Attorney General containing the same type of data is unnecessary. Only one registry is needed to enforce the Act, and one registry already exists. And, if there were two registries, there would likely be tremendous duplication of Nevadans' telephone numbers. In fact, the Act and federal law require the Attorney General to repeat all Nevada telephone numbers in the National Registry in a Nevada-specific registry.¹⁶ In sum, it is not in the best interest of Nevada for the Attorney General to create an unnecessary registry that contains duplicate data.
2. Nevadans would likely begin to receive less telemarketing calls sooner after registering on the National Registry than on a Nevada-specific registry. This is because telemarketers are required to update their versions of the National Registry at least every 31 days,¹⁷ while the most current version of a Nevada-specific registry created by the Attorney General is only required to be made accessible to telemarketers at least

¹⁴ 16 C.F.R. § 310.8(e).

¹⁵ Federal Trade Commission, *Q&A for Telemarketers & Sellers About DNC Provisions in TSR*, Federal Trade Commission, <https://www.ftc.gov/business-guidance/resources/qa-telemarketers-sellers-about-dnc-provisions-tsr-0> (last accessed June 3, 2022), [hereinafter *FTC Q&A for Telemarketers*]; FTC Congressional Report, *supra* note 8, at 3.

¹⁶ Nev. Rev. Stat. § 228.550(1)(f), 47 U.S.C. § 227(e)(2).

¹⁷ *FTC Q&A for Telemarketers*, *supra* note 16.

once every six months.¹⁸ Practically speaking, this means Nevadans with telephone numbers on the National Registry can anticipate receiving less telemarketing calls about one month after their registration, as opposed to several months more on a Nevada-specific registry.

3. A Nevada-specific registry would likely confuse and burden consumers. For instance, the Act requires Nevadans to renew their registration in a registry created by the Attorney General approximately every three years.¹⁹ Hence, registered Nevadans would not only need to periodically remember to re-register to keep their registrations valid, but they would also need to make the time and effort to actually re-register. Yet, if those same Nevadans are registered with Nevada area codes in the National Registry as well, they would not need to re-register given those registrations do not expire and the requirement that the Attorney General repeat Nevada telephone numbers in the National Registry in a Nevada-specific registry.²⁰ These types of resources and causes for confusion would be eliminated if the Nevada portion of the National Registry is used as the registry for the Act.
4. A Nevada-specific registry would also burden telemarketers that seek to comply with the Act, including increasing their business costs. Today, telemarketers are experienced with the National Registry and how to access its data. Upon verification of payment, this data is securely downloaded at least every 31 days from a National Registry web site devoted to this purpose (telemarketing.donotcall.gov).²¹ If the Attorney General were to create a Nevada-specific registry, telemarketers would need to learn, purchase, and follow another process to ensure compliance with the Act, hence increasing regulatory burdens.
5. It is also in the best interest for Nevada to avoid the enormous costs and resources associated with establishing and maintaining a Nevada-specific registry. These costs include those for hardware, database and website development, database security, automated telephone services, financial processing services (for telemarketer access), support services (including a help desk for telemarketers), and consumer marketing and outreach. Although the Attorney General has not performed specific economic analysis on this, one can reasonably project the costs for a Nevada-specific registry to be millions of dollars given Congress authorized \$18.1 million to initially fund the National Registry.²² Hence, by using the National Registry, Nevada is able to not incur extremely large expenditures in creating its own registry for purposes of the Act.

¹⁸ Nev. Rev. Stat. §§ 228.550(1)(c), .580.

¹⁹ *Id.* §§ 228.550(1)(d)-(e), .560(1)(d).

²⁰ *See supra* notes 13 and 17.

²¹ *See also* FTC Q&A for Telemarketers, *supra* note 16.

²² 68 Fed. Reg. 44144, 44146 (July 25, 2003).

Finding

Based on the foregoing, the Attorney General hereby finds:

1. The part of the National Registry that relates to Nevada is adequate to serve as the registry for the purposes of the Act; and
2. It is in the best interests of Nevada for the Attorney General to use the part of the National Registry that relates to Nevada for the purposes of the Act.

As a result, the part of the National Registry that relates to Nevada continues to be deemed the registry for purposes of the Act.

Dated: June 3, 2022.



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