

Decision No. R03-0944

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 03R-252T

IN THE MATTER OF PROPOSED AMENDMENTS TO THE COMMISSION RULES
CONCERNING THE COLORADO NO-CALL LIST, 4 CODE OF COLORADO
REGULATIONS 723-22.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
KEN F. KIRKPATRICK
ADOPTING RULES**

Mailed Date: August 20, 2003

I. STATEMENT

1. This proceeding was instituted by the issuance of Decision No. C03-0663, June 16, 2003. That decision gave notice of a proposed rulemaking to amend the Commission's Rules Concerning the Colorado No-Call List, 4 *Code of Colorado Regulations* 723-22 (No-Call Rules). The stated purpose of the proposed rulemaking is to amend the No-Call Rules to incorporate recent amendments to the No-Call List Act, §§ 6-1-901 *et seq.*, C.R.S. In particular, the proposed rulemaking is an attempt to: (1) include the telephone numbers of wireless telephone service subscribers electing to place their numbers on the No-Call List; (2) delete obsolete provisions from the No-Call Rules (*e.g.*, rules requiring certain one time actions in 2002); (3) require the Designated Agent to turn over excess registration fees (*i.e.*, fees collected in excess of the expenses of the program) to an account maintained by the State of Colorado; and (4) direct the Designated Agent to take all actions to allow Colorado to participate in the Federal No-Call Program.

2. Notice of the proposed rulemaking was published in the July 10, 2003 edition of *The Colorado Register*. The hearing was scheduled for August 7, 2003. Comments were received in advance of hearing from AT&T Wireless Services of Colorado, LLC, Fort Collins-Loveland Cellular Telephone Company, and Greeley Cellular Telephone Company (collectively AT&T Wireless); and from Verizon Wireless.

3. At the assigned place and time the undersigned called the matter for hearing. AT&T Wireless, Verizon Wireless, Qwest Corporation (Qwest), and the Staff of the Public Utilities Commission provided oral comments on the proposed rules.

II. FINDINGS, CONCLUSIONS, AND DISCUSSIONS

4. There was no comment on most of the proposals. Comment centered on proposed Rule 22-5, which would require wireless telephone service providers to provide quarterly to the Designated Agent a list containing all changed, transferred, and disconnected telephone numbers.¹ This would ensure that the cell phone numbers of customers who sign up for the No-Call List, but then discontinue service, are taken off the list. AT&T Wireless and Verizon Wireless suggest that this provision not be adopted.

5. AT&T Wireless suggests that the proposed rule is an unnecessary duplication of effort because of the interaction between the Colorado No-Call List and the National Do Not Call Registry. It does appear that entry in the National Do Not Call Registry will be limited to a period of five years, and numbers will be periodically purged, perhaps on a monthly basis. However, the monthly purging requirement does not appear to have been incorporated into the federal rule. *See* 16 C.F.R. Part 310. Also, the National Do Not Call Registry is still in its

¹ The current rules require local exchange carriers to provide this information now.

infancy and the actual method by which states and the National Registry will exchange information is far from being certain.

6. As there is an ongoing No-Call List in this state at present, it appears that the concerns of AT&T Wireless and Verizon Wireless can be better addressed through the waiver provisions of the existing rules, rather having the Commission adopt a rule that totally exempts wireless providers from the periodic updating. AT&T Wireless did present some information as to the difficulty it could potentially encounter should the formats of the information required by the national and state registries be different. However, the information was not sufficiently detailed to support the recommendation that Rule 22-5 not be extended to wireless providers. Similarly, Verizon Wireless simply requested similar relief without presenting evidence of any hardship or unusual circumstances. The waiver mechanism exists to allow entities such as these the opportunity to present a factual basis for relieving them from the applicability of the rules. Therefore the suggestion of AT&T Wireless and Verizon Wireless will not be adopted.

7. Qwest noted several instances in Rules 1, 4, 5, and 6 where references to wireless providers have been omitted and should be included. These suggested additions are incorporated into the rules which are set forth as an attachment to this Order.

8. The rules as proposed do implement House Bill 03-1098 in an efficient and reasonable manner and therefore they should be adopted.

9. In accordance with § 40-6-109, C.R.S., it is recommended the Commission enter the following order.

III. ORDER

A. The Commission Orders That:

1. The amendments to the Commission rules concerning the Colorado No Call List, 4 *Code of Colorado Regulations* 723-22, set forth in the Appendix to this Order are hereby adopted.

2. This Recommended Decision shall be effective on the day it becomes the Decision of the Commission, if that is the case, and is entered as of the date above.

3. As provided by § 40-6-109, C.R.S., copies of this Recommended Decision shall be served upon the parties, who may file exceptions to it.

a) If no exceptions are filed within 20 days after service or within any extended period of time authorized, or unless the decision is stayed by the Commission upon its own motion, the recommended decision shall become the decision of the Commission and subject to the provisions of § 40-6-114, C.R.S.

b) If a party seeks to amend, modify, annul, or reverse basic findings of fact in its exceptions, that party must request and pay for a transcript to be filed, or the parties may stipulate to portions of the transcript according to the procedure stated in § 40-6-113, C.R.S. If no transcript or stipulation is filed, the Commission is bound by the facts set out by the administrative law judge and the parties cannot challenge these facts. This will limit what the Commission can review if exceptions are filed.

4. If exceptions to this Decision are filed, they shall not exceed 30 pages in length, unless the Commission for good cause shown permits this limit to be exceeded.

(SEAL)

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO



KEN F. KIRKPATRICK

Administrative Law Judge

ATTEST: A TRUE COPY

A handwritten signature in cursive script, reading "Bruce N. Smith".

Bruce N. Smith
Director

**THE
PUBLIC UTILITIES COMMISSION
OF THE
STATE OF COLORADO**

**COMMISSION RULES CONCERNING THE COLORADO NO-CALL LIST
4 CODE OF COLORADO REGULATIONS (CCR) 723-22**

BASIS, PURPOSE AND STATUTORY AUTHORITY

The basis and purpose of these rules is to implement the Colorado No-Call List Act, §§ 6-1-901 et. seq. C.R.S. The Act intends that the Commission, primarily through oversight of the Designated Agent, develop a mechanism by which the privacy of residential telephone subscribers, and wireless telephone service subscribers, and the commercial interests of telephone solicitors are reasonably and fairly balanced.

The No-Call List Act establishes procedures under which individual residential telephone subscribers and wireless telephone service subscribers can decide whether or not to receive telephone solicitations by phone or fax. It allows residential subscribers to give notice to telephone solicitors of their objection to receiving solicitations by placing their telephone numbers and zip codes on the Colorado No-Call List. Business subscribers may not place their numbers and zip codes on the Colorado No-Call List. A residential subscriber of telephone and/or wireless service may give notice of his or her objection to receiving telephone solicitations by one of two methods: (1) by entering the area code, phone number and zip code of the subscriber directly into the database via an Internet application housed on the designated website, or (2) by entering the area code, phone number and zip code of the subscriber directly into the database via the designated statewide toll-free telephone number. There is to be no charge to the residential subscriber or wireless telephone service subscriber for placing his or her telephone number on the No-Call List. The Act requires telephone solicitors to remove from

their calling lists the number of any residential subscriber or wireless subscriber who has given notice of an objection to receiving telephone solicitations.

The statute directs the Commission to administer the Colorado No-Call List program, in part, by promulgating rules to such end. The Commission is empowered to contract for No-Call List services with a Designated Agent; establish, by rule, guidelines for the Designated Agent; and set the annual registration fees charged to telephone solicitors by the Designated Agent.

The No-Call List Act and these rules establish annual registration fees to be paid by persons or entities that wish to make telephone solicitations or otherwise access the database of telephone numbers and zip codes contained in the Colorado No-Call List database.

The statutory authority for these rules is found in §§ 6-1-905(3) and 40-2-108, C.R.S.

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RULE (4 CCR) 723-22-1. APPLICABILITY.

These Rules apply to the Designated Agent, wireless telephone service providers, and local exchange providers regulated by the Commission.

RULE (4 CCR) 723-22-2. DEFINITIONS.

723-22-2.1 “Colorado No-Call List” means the database of Colorado residential subscribers and wireless telephone service subscribers that have given notice, in accordance with rules promulgated by the Public Utilities Commission, of such subscribers’ objection to receiving telephone solicitations.

723-22-2.2 “Conforming List Broker” means any person or entity that provides lists for the purpose of telephone solicitation, if such lists shall have removed, at a minimum of every thirty days, any phone numbers that are included on the Colorado No-Call List.

723-22-2.3 “Designated Agent” means the party with whom the Public Utilities Commission contracts to administer the Colorado No-Call List program.

723-22-2.4 “Electronic Mail” means an electronic message that is transmitted between two or more computers or electronic terminals. Electronic Mail includes electronic messages that are transmitted within or between computer networks.

723-22-2.5 “Established Business Relationship” means a relationship that:

723-22-2.5.1 Was formed, prior to the telephone solicitation, through a voluntary, two-way communication between a seller or telephone solicitor, and a residential subscriber or wireless subscriber, with or without consideration, on the basis of an application, purchase, ongoing contractual agreement, or commercial transaction between the parties regarding products or services offered by such seller or telephone solicitor; and

723-22-2.5.2 Has not been previously terminated by either party; and

723-22-2.5.3 Currently exists or has existed within the immediately preceding eighteen months.

723-22-2.5.4 Established Business Relationship with respect to a financial institution or affiliate, as those terms are defined in section 527 of the federal “Gramm-Leach-Bliley Act of 1999”, includes any situation in which a financial institution or affiliate makes solicitation calls related to other financial services offered, if the financial institution or affiliate is subject to requirements regarding privacy of Title V of the Federal “Gramm-Leach-Bliley Act of 1999”, and the financial institution or affiliate regularly conducts business in Colorado.

723-22-2.6 “Internet” means the international computer network consisting of federal and nonfederal, interoperable packet-controlled switched data networks.

723-22-2.7 “Residential Subscriber” means a person who has subscribed to residential telephone service with a local exchange provider, as defined in section 40-15-102(18) C.R.S. “Person” also includes any other persons living or residing with such person.

723-22-2.8 “Residential Telephone Service” includes wireline transmission of voice or telefacsimile communication to residential telephone customers.

723-22-2.9 “Telephone Solicitation” means any voice or telefacsimile, graphic imaging, or data communications including text messaging communications over a telephone line or wireless telephone for the purpose of encouraging the purchase or rental of, or investment in, property, goods, or services, whether such communication originates from a live operator, through the use of automated dialing and recorded message equipment, or by other means.

723-22-2.9.1 “Telephone Solicitation” does not include communications:

723-22-2.9.1.1 To any residential subscriber or wireless telephone service subscriber with that subscriber’s prior express invitation or permission;

723-22-2.9.1.2 By or on behalf of any person or entity with whom a residential subscriber or wireless telephone service subscriber has an established business relationship;

723-22-2.9.1.3 For thirty days after a residential subscriber or wireless telephone service subscriber has contacted a business to inquire about the potential purchase of goods or services or until the subscriber requests that no further calls be made, whichever occurs first;

723-22-2.9.1.4 By or on behalf of a charitable organization that is required to and that has complied with the notice and reporting requirements of Section 6-16-104 C.R.S. or is excluded from such notice and reporting requirements by section 6-16-103(7) C.R.S.;

723-22-2.9.1.5 Made for the sole purpose of urging support for or opposition to a political candidate or ballot issue; or

723-22-2.9.1.6 Made for the sole purpose of conducting political polls or soliciting the expression of opinions, ideas, or votes.

723-22-2.10 “Telephone solicitor” means any person or entity that makes or causes to be made a telephone solicitation.

723-22-2.11 “Wireless Telephone” means a telephone that operates without a physical, wireline connection to the provider’s equipment. The term includes, without limitation, cellular and mobile telephones.

723-22-2.12 “Wireless Telephone Service Subscriber” means a person who has subscribed to a telephone service that does not employ a wireline telephone, or that employs both wireline and wireless telephones on the same customer account.

RULE (4 CCR) 723-22-3. ADMINISTRATIVE PROCEDURES.

723-22-3.1 **Telephone Solicitor Registration Fee:** Persons or entities that wish to make telephone solicitations or otherwise access the database of telephone numbers and zip codes contained in the Colorado No-Call List database shall pay to the Designated Agent the annual registration fee set by the Commission. Persons or entities with fewer than five employees shall pay no fees. Conforming list brokers or nonprofit corporations, as defined in Section 7-121-401 (26), C.R.S. shall pay no fee. The maximum fee set by the Commission shall be charged only to persons or entities with more than 1,000 employees.

723-22-3.2 **Determination of Annual Registration Fee:** The Commission will set the annual registration fee on a sliding scale. The sliding scale ranges from zero for persons or entities with fewer than five employees to the maximum fee of no more than \$500 for persons or entities with more than 1,000 employees. The sliding scale between five and 1,000 employees is directly related to the number of employees a particular entity has within that range. Moneys from such fees shall be used by the Designated Agent to cover the direct and indirect costs related to the ~~creation and~~ operation of the Colorado No-Call List. Moneys from such fees shall be collected and paid directly to the Designated Agent. The Commission may adjust the fees

annually based on the revenue history of the fees received by the Designated Agent. The annually adjusted fees will become effective on January 1 of each year.

723-22-3.3 Separate Accounting: To the extent that the annual registration fees received from telemarketers in any one calendar year exceed the determined contract amount for the Designated Agent, any unexpended and unencumbered moneys shall be transferred into the No-Call Fund or other appropriate fund managed by the State Treasurer, as determined by the Commission.

723-22-3.43 **Audit and Inspection of Records:** The Designated Agent shall permit the Commission to audit, inspect, examine, excerpt, copy or transcribe any of its records relating to the No-Call List program. The Designated Agent shall make all requested information available to Commission Staff for audit on request including, but not limited to: salaries and benefits associated with both operators and managerial employees, local exchange access charges, operating expenses, building rent and utilities costs, equipment depreciation, corporate overhead allocations, advertising and marketing expenses, expenses for consultants and temporary employees, and expenses for account management.

RULE (4 CCR) 723-22-4. DESIGNATED AGENT'S RESPONSIBILITIES.

723-22-4.1 **Implementation:** ~~No later than June 1, 2002,~~ the Designated Agent shall implement that portion of the No-Call List program enabling residential telephone subscribers and wireless telephone service subscribers, at no cost to such subscribers, to register their objection to receiving telephone solicitations. ~~No later than July 1, 2002,~~ the Designated Agent shall fully implement the No-Call List program, including providing the means for telephone solicitors to register and obtain the No-Call List data, and providing full access to the automated complaint system. The Designated Agent shall update the database on an ongoing basis with information provided by residential subscribers, wireless telephone service subscribers, wireless telephone service providers, and local exchange providers as required in these rules.

723-22-4.2 **Annual Registration:** The Designated Agent shall provide means for on-line registration. The Designated Agent shall also accept payment by credit card, check, or

money order of annual registration fees charged to any telephone solicitor that wishes to make telephone solicitations or otherwise access the database.

723-22-4.3 **No-Call Database:** The Designated Agent shall provide the No-Call List database to any telephone solicitor who has properly registered with the No-Call List program.

723-22-4.3.1 The Designated Agent shall make the data in the No-Call List database available online at the No-Call List designated website.

723-22-4.3.2 The Designated Agent must allow telephone solicitors to select and sort the data for downloading by zip code and telephone area code.

723-22-4.3.3 The No-Call List shall be made available to registered telephone solicitors as a downloadable extract file from the Colorado No-Call List website. This extract file must meet, at a minimum, the following requirements:

723-22-4.3.3.1 The file created shall be a standard ASCII text file. The file must be operating system and applications program independent.

723-22-4.3.3.2 The file should be generated using, at a minimum, a standard comma-delimited file format. At the discretion of the Designated Agent, other format options (tab-delimited, fixed-width, html, etc.) may also be provided to the registered telephone solicitor downloading the file.

723-22-4.3.3.3 Registered telephone solicitors shall have the option to download the No-Call List file using zip code or telephone area code as the sort and selection criteria:

723-22-4.3.3.4 For each extract file created, a separate informational or “Readme”, file should also be generated. This file should include at least the following information: general information about the No-Call List extract file created; the date the extract file was created; the user defined selection and sort criteria used to create the extract file; the number of records included in the extract file; the file layout used; and information about all fields included within the file and how they are delimited.

723-22-4.4 **Use of Existing Data:**

~~723-22-4.4.1 Some Colorado residents have already placed their telephone numbers and zip codes on an unofficial No-Call database maintained by the Bighorn Center for Public Policy. The Designated Agent shall accept this information for use in instituting the Colorado No-Call List, if the Bighorn Center makes its database available electronically to the Designated Agent on or before June 1, 2002. No later than June 2, 2002 the Designated Agent shall begin the process of verifying that the residential subscribers who placed their telephone numbers and zip codes on the Bighorn Center's No-Call database wish to have their telephone numbers and zip codes transferred to the Colorado No-Call List. All telephone numbers and zip codes that have been so verified by June 30, 2002 will be added to the Colorado No-Call List July 1, 2002. The Designated Agent shall complete this verification of all numbers on the Bighorn Center's No-Call database by September 30, 2002. All the telephone numbers and zip codes that have been verified by September 30, 2002 will be included on the Colorado No-Call List effective on October 1, 2002.~~

~~723-22-4.4.2~~ Upon expiration of the Designated Agent's contract to operate and maintain the Colorado No-Call List, the Designated Agent shall cooperate fully in the transfer of operations to any new Designated Agent selected by the Commission so that the No-Call List program continues without interruption. Such cooperation shall include providing the new Designated Agent with the current No-Call List in an electronic format such that it can be used immediately by the new Designated Agent.

723-22-4.5 **Record Maintenance:** The Designated Agent shall maintain electronically the current business name, business address, email address (if available), and telephone number of each person or entity registering to make telephone solicitations or otherwise accessing the No-Call List. This information must be updated when changes occur.

723-22-4.6 **Toll-Free Telephone Number:** The Designated Agent must pay for and maintain a toll-free statewide telephone number for use to register objections to receiving telephone solicitations and to file complaints.

723-22-4.7 **Notice of Objection:** The Designated Agent shall provide the means by which each residential subscriber or wireless subscriber of telephone service may give notice of objection to receiving telephone solicitations. The Designated Agent is required to provide two methods by which **residential** subscribers can provide notice of objection to receiving telephone solicitations:

723-22-4.7.1 By entering the area code, phone number and zip code of the subscriber directly into the database via an Internet application housed on the designated website.

723-22-4.7.2 By entering the area code, phone number and zip code of the subscriber directly into the database via the designated statewide toll-free telephone number.

723-22-4.8 **Revocation of Notice:** The Designated Agent shall provide means by which each residential subscriber or wireless subscriber of telephone service may revoke his or her Notice of Objection to receiving telephone solicitations. The Designated Agent is required to provide two means by which **residential** subscribers can revoke his or her Notice of Objection.

723-22-4.8.1 By entering the area code, phone number and zip code of the subscriber directly into the database via an Internet application housed on the designated website.

723-22-4.8.2 By entering the area code, phone number and zip code of the subscriber directly into the database via the designated statewide -toll-free telephone number.

723-22-4.9 **Transaction Dates:** The Designated Agent must record and maintain the date of each transaction identified in Rules 4.7 and 4.8 above.

723-22-4.10 **No-Call List Updates:** No later than the 10th day of every calendar quarter (i.e. January 10, April 10, July 10, and October 10) the Designated Agent shall electronically update the Colorado No-Call List to include any additions, deletions, changes and modifications made to the Colorado No-Call List by residential subscribers and wireless telephone service subscribers. No later than the 10th day of every calendar quarter the Designated Agent shall remove any telephone number from the No-Call List that has been disconnected or reassigned within the previous calendar quarter. ~~The first update shall occur no later than October 10, 2002.~~—The Designated Agent shall provide immediate access to the updated list to all registered telephone solicitors.

723-22-4.11 Information Requirements:

723-22-4.11.1 The Designated Agent will submit quarterly to the Commission the following information in order for the Commission to accurately adjust the registration fees and to file its reports to the Joint Budget Committee. The information shall be submitted no later than thirty days after the quarter end. The Commission will determine the exact format of this report. ~~The first report will be due no later than April 30, 2002.~~

723-22-4.11.1.1 Revenues from registration fees for the previous quarter;

723-22-4.11.1.2 Capital Investment for the No-Call List for the previous quarter;

723-22-4.11.1.3 Operating expense related to the administration of the No-Call List for the previous quarter; and,

723-22-4.11.1.4 Such other information as the Commission shall request for purposes of determining the annual registration fees or submitting its reports to the Joint Budget Committee.

723-22-4.11.2 The Designated Agent will submit semi-annually to the Commission the following information in order for the Commission to file semi-annual reports to the Joint Budget Committee. The Designated Agent will submit this information no later than October 31 to cover the period April 1 through September 30 and no later than April 30 to cover the period October 1 through March 31. The Commission will determine the exact format of this report. ~~The first report will be due no later than April 30, 2002.~~

723-22-4.11.2.1 Projected revenues for the next twelve months;

723-22-4.11.2.2 Projected operating expenses for the next twelve months;

723-22-4.11.2.3 Projected capital investment for the next twelve months;

and,

723-22-4.11.2.4 Such other information as the Commission shall request for purposes of submitting its semi-annual reports to the Joint Budget Committee.

723-22-4.12 **Information Distribution:** Neither the Designated Agent nor any person or entity collecting information to be transmitted to the Designated Agent shall make use of, or distribute, subscriber information contained in the No-Call List except as expressly authorized in these rules or by the No-Call List Act.

723-22-4.13 **Complaint System:**

723-22-4.13.1 The Designated Agent shall maintain an automated, on-line complaint system and a toll free statewide telephone complaint system for residential subscribers to report suspected violations of § 6-1-904 C.R.S.

723-22-4.13.1.1 The on-line complaint system shall be a web-based system and must have the capability to electronically collect, sort, and report suspected violations to the Colorado Attorney General.

723-22-4.13.1.2 The telephone complaint system shall be a toll-free statewide telephone number and the complaint information must ultimately be transformed into an electronic format by the Designated Agent in order for the suspected violation to be sent to the Colorado Attorney General.

723-22-4.13.2. The Designated Agent should collect from the complainant the following information: the complainant's name, address, telephone number, the date and time of the call, the name of the telemarketer, and the product or service being marketed. Upon approval by the Commission the Designated Agent will collect such other information requested by the Colorado Attorney General.

723-22-4.13.3 The Designated Agent may apply for a waiver of the requirements in this Rule 4.13. The Commission may grant a waiver only if the waiver is not contrary to the No-Call List Act and the Designated Agent demonstrates that compliance is impossible, impractical, or unreasonable.

723-22-4.14 **Federal No-Call List Program:** If at any point during the term of the Commission's contract with the Designated Agent, ~~a~~the Federal Government or any Federal agency establishes one or more official databases of residential or wireless telephone service subscribers who object to receiving telephone solicitations, the Designated Agent is authorized to

~~provide appropriated data from the official Colorado No-Call List exclusively for inclusion in an official, national do-not-call database. To the extent allowed by federal law, the Designated Agent shall ensure that the Colorado No-Call List includes that portion of an official National Do-Not-Call database that relates to Colorado. single national database of telephone numbers of residential subscribers who object to receiving telephone solicitations is established, the Designated Agent shall include that portion of such a single national database that relates to Colorado in the Colorado No-Call List.~~

723-22-4.15 **Help Line:** The Designated Agent shall provide mechanisms on both its website and its statewide toll free telephone number for assisting residential and wireless subscribers in placing their telephone number and zip code on the Colorado No-Call List.

RULE (4 CCR) 723-22-5. WIRELESS TELEPHONE SERVICE PROVIDERS' AND LOCAL EXCHANGE CARRIERS' RESPONSIBILITIES - NOTIFICATION OF DESIGNATED AGENT.

Not later than the 5th day of every calendar quarter (i.e., January 5, April 5, July 5, and October 5) local exchange carriers and wireless telephone service providers shall provide electronically to the Designated Agent a list containing any changed, transferred, and disconnected telephone numbers of residential and wireless service subscribers as of the last day from the of the previous calendar quarter. ~~The first list shall be provided no later than October 5, 2002.~~ These data must be in the format defined by Rule 4.3.3 such that the Designated Agent can use this information to amend the No-Call List.

RULE (4 CCR) 723-22-6. WAIVER.

The Designated Agent, any wireless telephone service provider, or any local exchange carrier may apply for a waiver from any requirement in these rules. The Commission may grant a waiver if not contrary to the No-Call List Act and the applicant demonstrates that compliance is impossible, impractical, or unreasonable.