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Want to Call Me? Pay Me!

By Ian Ayres and Barry Nalebuff

The national Do Not Call Registry is the most popular consumer-protection initiative in our nation's history -- because it makes clear that you "own" the right to be left alone. But the current law is flawed on two counts. Households can block commercial telemarketers, but not annoying calls from the benevolent association of retired dogcatchers. This government discrimination in favor of charities is why a federal court struck down the regulations as unconstitutional.

More importantly, it misses a market opportunity. The classic role of government is to establish a system of property rights and then to get out of the way to let entitlement flow to highest valuers. But the Do Not Call registry needlessly prevents you from selling a scarce resource -- your time and attention. Telemarketers could call from a reverse 900 number. That way, you would get paid for taking the call. While they are trying to sell you a product, you can be selling them your time.

The FTC can solve the constitutionality issue and create a market by simply tweaking the current regulation.

First, the registry's coverage should be expanded to block calls from any telemarketer that makes more than 100 unsolicited calls a day. This would solve the constitutional difficulty, because the regulation would not turn on the content of the call but on the manner of calling.

Then, households that sign up for the Do Not Call registry should have the right to authorize their phone company to connect any calls that meet the household's price. Just think of it: You could charge different prices for different times of day or for different types of calls. You could even be given the option of hitting a button to waive the compensation -- because you felt that a particular charitable pitch was particularly worthy -- or let through any calls approved by Rush Limbaugh.

Just as Priceline turned the tables on airline pricing, this concept turns the tables on advertising. You tell your phone company your price for listening, and prospective callers can then decide whether it's worth their while. And instead of treating direct marketing as a pariah industry that needs to be caged or crippled, we reconceive it as an attractive business opportunity for everyone involved.

-- Families get a system that gives them more control -- and an option to be paid for their time.

-- Intermediaries suddenly have a new service to sell. "Sign up with Verizon and choose your own price for receiving promo calls." Just as Verizon makes money by selling its 900 service, it could charge telemarketers to

connect calls for a kind of reverse 900 service that compensates the household for listening.

But would telemarketers ever be willing to pay for your time? Of course they would, that's what advertising is. A full page print ad in The Wall Street Journal, for instance, costs \$180,000 or 10 cents a reader. Firms are willing to pay dearly for the chance to get their message to you. And telemarketers would pay here only for the targets they reach. If they don't think the person is listening, they can hang up and stop paying. (Consumers are equally free to quit the call and stop getting paid).

Telemarketers with a product that sells and a targeted list would be made better off with a truly free market in compensated calling. Compensation would make people more receptive. Also, regulations now block many forms of marketing. For instance, telemarketers are not allowed to call cell phones, send faxes or use pre-recorded calls (not that this law is universally obeyed). But under a system of compensated calling, it might make more sense to pay you to listen to a recording of James Earl Jones making a sales pitch than to pay a phone-bank caller minimum wage to try to speak to you.

The appropriate role for government is not to tell us what type of calls we can and cannot block. Instead, the "do not call" regulations should simply protect families' right to control whether their phone rings. The current regulation is an important step in this direction. But Congress should allow the market to do more of the work. All that the FTC (or Congress) needs to do is to allow registered households to authorize intermediaries to connect calls that meet their conditions. This can be done by adding 21 words to the current regulation: "A 'specific seller' for purposes of (section) 310.4(b)(1)(iii) shall include intermediaries who are authorized to connect calls that meet pre- specified household prerequisites."

This simple change would strengthen consumers' privacy control and facilitate a true market for telemarketing. You should be able to block any unsolicited calls that don't meet your price and take the ones that do.

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