

A Better Way to Foster Telephone Privacy

by

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The 8 billion telemarketing calls that consumers endure each year are a royal pain. But the new "Don't Call" law is not the answer. Instead, consumers should be allowed to decide how much they will be compensated for receiving such calls.

The new law (which just became effective in New York and has already been passed in 6 other states) forces consumers to make an all-or-nothing choice. Either they register on the state's "don't call" list and thereby opt out of all for-profit telemarketing calls or they remain subject to potentially unlimited telemarketing harassment.

But it is possible to give both consumers and telemarketers more freedom. It's technologically feasible to give consumers the ability to determine how much they will be compensated per minute for listening to the pitch. If consumers want, they can recreate the effect of the current law by choosing either an infinite or a zero price. But many consumers will choose intermediate amounts.

Instead of prohibiting telemarketers from calling people on the "don't call" list, telemarketers could call anyone -- as long as they were will to pay the person's (potentially infinite) price.

The technology for such a system is no more complicated than a 900 number. Under our scheme, the telemarketers would be required to call from an "outgoing 900 number." With existing 900 numbers a payment from the caller to the recipient is triggered when the caller dials into a 900 number. But with an outgoing 900 number, a per minute fee (set by consumers) from the telemarketer and credited to the consumer telephone bill would be triggered when the telemarketer calls out from a 900 number.

A system which compensates consumers for their time also would allow us to deregulate other aspects of the telemarketing industry. Federal law currently prohibits telemarketers from calling after 9 p.m. and many states prohibit tape-recorded solicitations. These laws make eminent sense in a world where consumers are not compensated. But in a world with consumer consent, there is no longer a reason for a per se prohibition. As a technological matter there is no reason why consumers couldn't set different prices for different times of day or different types of solicitations.

Telemarketing like other forms of advertizing can provide useful information. And telemarketers who have to compensate consumers are more likely to tailor their offers to the interests of specific consumers.

Make no mistake, we predict that some types of telemarketing calls would be driven into the dust bin of history by a system of mandated compensation. And a good thing too. The home phone has become another tragedy of the commons where there is every incentive to over fish. Telemarketers under the current system don't take into account the annoyance of the 50 consumers who fail to buy when they are trolling for the consumer who will bite.

The new "don't call" law isn't likely to end this overfishing problem - it will instead concentrate the annoyance on a smaller subset of the population. Telemarketers will predictably be forced to gang up on those consumers who fail to register. The likely result is a inefficient unraveling -- with too little telemarketing for those who register and too much for those who fail to register.

Giving telemarketers the option of compensating consumers might even be good business for some parts of industry. It has become a national pastime for consumers to devise new ways to detect and terminate telemarketing intrusions. Telemarketers are facing increasing consumer resistance.

In today's world, we imagine that the Gallop Poll might welcome the opportunity to compensate survey respondents so

that they might be able to produce more representative samples. Or if the prohibition against tape-recorded messages were repealed, we could imagine local grocery stores or movie theaters using the telephone to provide consumers with useful information about specials.

The Internet has underscored not just the value of people's attention (eyeballs) but the possibility of compensating them for their time. Others have suggested that consumers should be compensated for receiving SPAM email, but the same idea can be used to solve the much larger analogous problems of telemarketing calls and junk mail.

Instead of asking how much we'd be willing to pay to avoid these unsolicited solicitations, we should be asking ourselves how much we'd want to be paid to receive them.

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