



NATIONAL ASSOCIATION OF REALTORS®

The Voice For Real Estate®

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Walter T. McDonald, CRS, GRI
President

June 1, 2004

Federal Trade Commission
Office of the Secretary
Room H-159 (Annex K)
600 Pennsylvania Ave, N.W.
Washington, D.C. 20580

Re: TSR Fee Rule, Project No. P034305, 69 *Federal Register* 84, 23701-23705 (April 30, 2004)

Dear Sir or Madam:

The NATIONAL ASSOCIATION OF REALTORS® (NAR) appreciates this opportunity to comment on the Federal Trade Commission's (FTC) proposed amendments to the Telemarketing Sales Rule (TSR) to revise fees charged to entities accessing the National Do-Not-Call Registry (Registry). The NAR is America's largest trade-membership association representing 1 million members, including NAR's institutes, societies and councils, involved in all aspects of the residential and commercial real estate industries, and therefore has a significant interest in the outcome of this rulemaking process.

Reassess the Pricing Structure to Eliminate an Existing Pricing Inequity that Penalizes Small Businesses.

NAR respects the Commission's obligations to implement and enforce the amended TSR, which, *inter alia*, established the National Do-Not-Call Registry. However, we believe the proposed fee increase, which is almost double for both individual area codes and the entire Registry, financially penalizes small business owners, such as real estate professionals, and undermines their economic contribution to the marketplace.

Currently five or fewer area codes are provided free of charge and each additional area code above five costs the seller \$25.00. The FTC has indicated that allowing such free access "limit[s] the burden placed on small businesses that only require access to a small portion of the

national registry.”¹ This pricing structure *assumes a direct relationship* between the number of area codes required and the number of calls made to each area code. However, this is not always the case. In today’s increasingly interconnected world, a business may be small in size (number of employees, receipts, assets, etc.) but not be limited to a small geographic market area.

Consequently, many small businesses, including real estate agents and brokers, often have the need to call a limited number of consumers who reside in a variety of states and/or area codes beyond their primary five area code local calling region. This is especially the case for REALTOR[®]-owned small businesses in resort communities. It is common for these small businesses to find themselves forced to pay for access to a number of additional area codes in order to research a single phone number in each area code. This is the case while, at the same time, a large company who relies heavily on telemarketing, and makes thousands of calls to consumers but limits these calls to within the five-code area, does not have to pay a fee. The NAR believes additional consideration should be given to this *obvious inequity* that can have serious cost consequences for not only REALTOR[®]-owned small businesses, but small businesses in every industry and market.

We would remind you of the Small Business Administration’s Office of Advocacy (Advocacy) recommendation to the FTC that research is needed to help determine whether five is an appropriate number for free area codes. Specifically, Advocacy stated in their June 2002 comments to the Commission regarding its notice of proposed rulemaking on TSR user fees:

Advocacy recommends that the FTC contact small telemarketers and inquire how many area codes they commonly access in a give year during the course of the business. The information gleaned through this outreach effort can be used to support the agency’s decision-making and final regulatory flexibility analysis. Advocacy is willing to assist the FTC in facilitating this dialogue.

To date, this information gathering has not occurred and hence, there is no data to support the Commission’s position that five free area codes limits the burden for small businesses. In this regard, we respectfully request the FTC to consider exempting small businesses as defined by the Small Business Act² until the Commission gathers information from small businesses that make telemarketing calls, and: 1) demonstrates that these businesses only require access to a small portion of the Registry and are not adversely impacted by the fee increase; and/or 2) that a more equitable fee structure is not feasible.

¹ 68 *Federal Register* 147, 45140 (July 31, 2003).

² 15 U.S.C. 631 *et seq.*

Perfect Storm for Small Business Regulatory Compliance

Sixty-five percent of the NAR membership is composed of small firms with five or fewer agents per office. Furthermore, 80 percent of REALTOR[®]-owned small businesses have four or fewer employees. Over the last 12 months, these very small businesses were subjected to several new federal regulations:

- Do-Not-Call rules and the establishment of the National Do-Not-Call Registry;
- Do-Not-Fax rules;
- CAN SPAM Act provisions;
- Monthly Registry Access rule; and now,
- Increase in fees charged for accessing the National Do-Not-Call Registry.

All of these new regulations have increased operating expenses for REALTOR[®]-owned small businesses due to the changes in office compliance procedures. In the area of the Do-Not-Call rules, some firms have seen an increase in the labor costs resulting from internal efforts to download and scrub calling lists while others have had to absorb the costs involved with employing the services of third parties to do that job. Given the relative newness of the Registry, we do not yet have data to quantify the cost burden on the real estate industry. We have heard from our members, however, and they indicate that the Do-Not-Call rules have had a significant financial impact on their business. In order to better communicate to the Commission this impact on REALTORS[®], we asked our members to explain the importance of telephone marketing to their small business. Below are some of the responses we received; the majority of comments indicated that telephone marketing is very important to REALTORS[®]' businesses.

- “Telephone marketing has been the prime source of my income. It is now taking me a tremendous amount of time to continually check the list before making calls. I now have to spend much more time knocking on doors which takes more time.”
- “The telephone is my life link for my business. Having to think about how about how much time has passed [since the inquiry or transaction] and therefore can I still call someone, and also having to keep logs so that I do not violate the rule has become very time consuming leaving less time for my business.”
- “Telephone marketing is a major source of income to my realty business. The fact that I can no longer call freely has increased the amount of money I spend on mailings, websites, etc.”
- “The do not call means we can only snail mail, The cost of paper, secretary time, stamps, envelopes, copies, ink, etc., has slowed my business down by 30 days or more.”
- “The do not call law has been a disaster for my business. My business has decreased by two-thirds. I have already had to lay off an employee.”
- “Because there is so much junk mail going out, being able to keep in touch with past clients, say 2 to 3 years ago, and being able to call the neighbors of new listings is critical.”

As you are most likely aware, small businesses represent 99 percent of American companies. Yet despite their importance to the economy, small businesses are burdened disproportionately by the costs of government regulations such as the Do-Not-Call/Do-Not Fax rules and the CAN SPAM Act provisions. According to the Small Business Administration's Office of Advocacy, very small firms with fewer than 20 employees, such as REALTOR[®]-owned small businesses, spend 60 percent more per employee than larger firms to comply with federal regulations.³ We ask the Commission take into consideration the "perfect storm" of new regulatory compliance burdens that REALTOR[®]-owned small businesses are still adjusting to and ease the burden of a fee increase so as to not cause further financial harm to America's small firms.

Fee Increase is Targeted Toward Maintenance of the Registry and Outside The Scope of Congressional Authority

The NAR appreciates that funds are required to operate the National Do-Not-Call Registry and we acknowledge that the FTC needed significant initial funding to cover the Commission's infrastructure of the Registry costs as well as all the associated technological structural support. We further acknowledge that funds are required to *maintain* the Registry, however the NAR believes this funding requirement is outside the scope of the Commission's authority as provided by Congress.

The Consolidated Appropriations Act of 2004, Pub. L. 108-199, the Do-Not-Call Implementation Act of 2003, Pub. L. No. 108-10 and the Consolidated Appropriations Resolution of 2003, Pub. L. No. 108-7, gives the FTC the authority to collect offsetting fees "sufficient to implement and enforce" the provisions TSR.⁴ In its proposed rulemaking, the FTC indicated that their need to raise additional funds is related to "implementing and enforcing the 'do-not-call' provisions of the Amended TSR."⁵ However, in addition to noting a funding requirement for law enforcement efforts, the FTC mentions the need for funds to operate the Registry, including handling consumer registration, complaints and telemarketer access to the Registry as well as overhead support costs for staff and other personnel expenses. The NAR believes that these are offset costs relating to the *maintenance and sustenance* of the Registry, not the *implementation* as authorized by Congress.

The only information about amounts that the FTC has collected in off-setting costs for FY2003 is \$5.1.⁶ There is no budgetary information about amounts the Commission has expended to date on the operation of the registry, law enforcement efforts or infrastructure and administrative costs. In this regard, we believe the FTC has provided the public with insufficient information to

³ See <http://app1.sba.gov/faqs/faqindex.cfm?areaID=24>

⁴ The 2003 Appropriations Act language refers specifically to implementation and enforcement of the "*do-not-call provisions* of the Telemarketing Sales Rule" (emphasis added) where the 2004 Appropriations Act more generally permits the collection of offsetting fees sufficient to "implement and enforce the Telemarketing Sales Rule." (citations omitted).

⁵ 69 *Federal Register* 84, 23702 (April 30, 2004).

⁶ *Id.* at fn. 4.

warrant such a fee increase related to the implementation and enforcement of the do-not-call provisions of the Amended TSR. Hence, the public is at a disadvantage in formulating an opinion as to whether or not the FTC has overstated its implementation and enforcement efforts by citing the need to raise \$18 million through the proposed fee increase. We respectfully request the FTC to publish detailed budgetary expenditures for FY2003 and projections for FY2004, with a specific notations as to whether the cost is associated with: 1) *maintenance* of the Registry; 2) *implementation* of the “do-not-call” provisions of the TSR; or 3) *enforcement* of the “do-not-call” provisions of the TSR.

Conclusion

In light of the above, the NAR respectfully requests the FTC reconsider the fee increase and offer an alternative access fee structure solution that would provide the appropriate relief for small businesses. Furthermore, we reiterate our position that the FTC needs to eliminate the inequity in the current Registry access pricing structure that unintentionally panelizes small businesses.

Thank you for the opportunity to present the views of the National Association of REALTORS®.

Sincerely,

A handwritten signature in black ink that reads "Walter T. McDonald". The signature is written in a cursive, slightly slanted style.

Walter T. McDonald
2004 President