NMHC National Multi Housing Council

National Apartment Association

June 1, 2004

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

**Re: TSR Fee Rule, Project No. PO34305**

Dear Madam or Sir:

The National Multi Housing Council (NMHC) and the National Apartment Association (NAA) are pleased to submit comments in response to the Federal Trade Commission's (FTC) Notice of Proposed Rulemaking to amend the Telemarketing Sales Rule ("TSR") to revise the fees charged to entities accessing the National Do-Not-Call Registry.

NMHC/NAA represent the nation's leading firms participating in the multifamily rental housing industry. Our combined memberships are engaged in all aspects of the apartment industry, including ownership, development, management, and finance. NMHC represents the principal officers of the apartment industry's largest and most prominent firms. NAA is the largest national federation of state and local apartment associations, comprised of 164 affiliates and representing more than 31,500 professionals who own and manage more than 5 million apartments. NMHC and NAA jointly operate a federal legislative program and provide a unified voice for the apartment industry.

This proposed rule is of great concern to the NMHC/NAA, primarily because of the increased financial burden it will impose on our members who telemarket. We are equally concerned with the methodology used by the FTC to support the proposed fee increase and question why alternatives have not been identified. We believe that inadequate analysis has been conducted to justify a fee increase at this time and we urge the Commission to reconsider its proposal.

**The Proposed Fee Increases are Significant**

The additional financial burden on all businesses, particularly small businesses, that would be created by this proposal must not be underestimated. The proposed fee increase is significant. Revising the fee to $45 per area code would represent an 80 percent increase over the 2003 fee of $25. Access to the entire list would cost $12,375, a 68 percent increase over the 2003 fee of $7,375. Increases of this magnitude would undoubtedly force many small businesses to alter their marketing practices given the negative impact on their bottom lines.

Under Small Business Administration (SBA) guidelines, 99 percent of the operators of residential rental housing qualify as small businesses. SBA defines a real estate concern as a small business when its total "annual receipts" are no more than $5 million. "Annual receipts" are defined at 13 CFR 121.104 as "total income" plus "cost of goods sold," in the same manner these terms are defined or reported to the IRS

The FTC should consider the additional financial burden to the small businesses of America before moving forward with this proposal.

**The Fee Increase Penalizes Compliant Entities**

The Commission's rationale for the fee increase is that fewer companies have signed up to access the Registry than it anticipated, resulting in a funding shortfall. The current fee structure estimated that 10,000 registered entities would be required to pay for the Registry. However, the FTC's data concludes that only 6,000 entities have paid for access. It is troubling that the FTC immediately responded with a proposal to increase the fee to make up for this shortfall rather than conduct an analysis to ascertain the reliability of these numbers and consider possible underlying reasons for the shortfall. Specifically, the FTC does not appear to have considered that widespread non-compliance with existing regulations may be one of the major causes of the shortfall. While it might be difficult to quantify non-compliance, a simple comparison between the number of companies that have signed up for the Registry and the number of consumer complaints recorded by the Commission reveals that registered firms may be subsidizing those who are not.

For example, in a press release dated February 13, 2004, the FTC announced the registration and complaint figures for 2003.

**September 2003 through March 2004:**

- Over 52,000 entities have accessed all or part of the Registry information. (This represents the number of registered entities.)

**September 2003 through December 2003:**

- FTC receives over 150,000 consumer complaints. After sorting, these were attributed to approximately 55,000 specific companies.

These numbers suggest a couple of things; 1) at least one consumer complaint has been registered against every registered entity or, 2) many of the companies in question were not registered as users of the Registry.

While the first scenario is highly unlikely, and the second represents pure speculation, both possibilities underscore the need for additional review and analysis by the FTC. Emphasis should be placed on increasing the number of entities registered and not simply increasing the fees imposed on complying entities.

It is our belief the Commission is acting too swiftly to increase the fees without accurately identifying the reason for the tremendous shortfall of registrations and thus needed revenue. NMHC/NAA urge the Commission to conduct the appropriate analysis to assess the compliance rate of covered entities. This analysis should also include an identification of alternative revenue sources. Unless this analysis is conducted, fee increases will simply force the compliant entities to continually subsidize the non-compliant.

I thank you for your consideration.

Sincerely,

Jeanne McGlynn Delgado
Vice President