

**Before the
Federal Trade Commission
Washington, D.C. 20580**

In the Matter of)	
)	
)	
The Telemarketing Sales Rule (“TSR”) –)	TSR Fee Rule, Project No. P034305
revised fee structure)	
)	
)	

COMMENTS OF MIKE HEINEMANN

Introduction

1. I respectfully submit these comments in response to the Notice of Proposed Rulemaking “NPRM”¹ issued by the FTC which proposes to amend the fee structure for access to the National Do-Not-Call Registry.
2. The Commission seeks comments on several issues raised in the NPRM, such as continuing to allow the first five area codes to be accessed free, free access to exempt parties, and any significant alternatives.

The Commission should consider reducing the number of free area codes.

3. The Commission should consider reducing the number of free area codes to four. This would still allow small businesses to access a small portion of the registry free of charge. If a business needed to access more area codes, they could then pay the relatively small fee for each area code they would need. I believe that this would not unduly burden small businesses since the fee for access is so small. If a small business was located in the DFW area, four area codes would still allow them to access the 214, 972, 469, and 817 area codes. Almost half the states in the US currently have four or fewer area codes².

Access to the Do-Not-Call Registry should remain free to exempt entities.

4. I agree with the Commission that exempt parties should be able to access the registry free of charge. This would allow consumers who have registered on the Do-Not-Call Registry to receive fewer calls from entities that are not required to scrub their lists, but choose to do so voluntarily. By charging for such access to an entity that would not be required to do so would increase the likelihood that an exempt entity would not scrub

¹ Telemarketing sales rule: National Do-Not-Call Registry; user fees, 69 Fed. Reg. 23701 (April 30, 2004)

² 24 states. Alaska, Alabama, Arkansas, Colorado, Connecticut, Delaware, Hawaii, Idaho, Kansas, Maine, Mississippi, North Dakota, Nebraska, Oklahoma, Oregon, Rhode Island, South Carolina, South Dakota, Utah, Vermont, West Virginia, Wyoming.

numbers against the Do-Not-Call Registry and as such consumers would receive more unwanted calls.

Significant Alternatives

5. In the NPRM, the Commission invites comments on significant alternatives to the proposed revised fees. I suggest the Commission consider a per-lookup fee in addition to the per area code fee. This fee would charge a small fee (say 25¢) to look up individual numbers on the Do-Not-Call registry. In the past, several commenters have stated that although they are a small business, they make calls nationwide and five free area codes might not be enough. In at least one instance a commenter stated that they might only make 100 nationwide telemarketing calls in a year, however each might be to another area code. In that situation, a telemarketer would have to purchase a whole area code just to make one call. By adding a per-lookup fee, this would allow such small businesses to remain in compliance with the law without unduly burdening them.

Enforcement of the Do-Not-Call List

6. The Commission should also consider offsetting the cost of the Do-Not-Call list with fines from violations. With fines of up to \$11,000 per violation, the Commission could pass the cost on to the people that decide to violate the law, instead of the companies that chose to abide by it. So far the Commission has only announced one enforcement action³. On February 13th, 2004 the Commission announced that there were currently 45 entities with 100 or more complaints for violating the Do-Not-Call registry. If each were fined \$1000 for each violation, then at least \$4,500,000 would go towards administrating the registry. It is common practice among drug enforcement agency's to use money confiscated from illegal activities towards further enforcement activities. I believe the Commission should follow a similar model.

The Commission should not charge consumers to register on the Do-Not-Call List

7. In past NPRM's and in the current, several commenters have suggested that the cost of the National Do-Not-Call registry be passed on to the consumers who register⁴. However, as the Commission probably already knows that the TCPA prohibits charging a consumer to have their number placed on a National Do-Not-Call registry⁵. In the interest of complying with the TCPA pursuant to the Do-Not-Call Implementation Act, the Commission should reject such arguments.

³ FTC v National Consumer Counsel, et al.

⁴ Comment of John Girty Mar 28, 2003 "If the consumer wants to be on the list let the consumer pay for it.", Interactive Teleservices Corporation "A fee of \$5 to \$10 should be charged per telephone number per year should be charged to consumers", Midwest Readers Service "You also could have charged a nominal sign up fee of \$1.00 to register to the dnc to begin with and then you would have more than covered the cost to administer it."

⁵ Telephone Consumer Protection Act, 47 USC §227(c)(3)(E)

Closing

8. I wish to thank the Commission for the opportunity to submit my comments. As a consumer, I hope the Commission takes my comments to heart and take such action as necessary to ensure the protection of my privacy and that of other consumers.

Thank You,

Mike Heinemann