



March 29,2002

Federal Trade Commission
Office of the Secretary
600 Pennsylvania Avenue, NW, Room 159
Washington, DC 20580

Re: Telemarketing Rule Making Comment. FTC File No. R411001

These comments are submitted for the record on behalf of the National Federation of Independent Business (NFIB) in response to the Federal Trade Commission's (FTC) request for comments on proposed changes to the Commission's Telemarketing Sales Rule (TSR).

A recent poll taken by NFIB indicates that approximately 11 percent of small business owners who keep lists of customers use them to telemarket. The number of these who engage in telemarketing over state lines is relatively small. Nevertheless, consideration needs to be given to those small business who would be affected by this Rule now and in the future.

A careful review of the proposed changes to the TSR leaves many uncertainties regarding the implementation of the national do-not-call list and its impact on small business practices. If such proposed changes to the Rule were to be adopted, NFIB would like to ensure ease of implementation and consistency. We have the following concerns and comments:

Do-not-call Provision

The proposed Rule provides no prescription for its implementation. Specifically, the proposal does not discuss how firms that telemarket will receive updated lists from the FTC to "scrub" their own lists. We must assume, due to volume and simplicity issues, that the monthly do-not-call updates would be made available electronically.

Unfortunately, this method would lead to a compliance problem for some small business owners. NFIB research indicates that approximately 16 percent of small businesses do not use a computer in their business-related activities. These firms may have to abandon telemarketing or stand in noncompliance.

Do-not-call Safe Harbor

The original TSR contains four requirements that a seller or telemarketer must meet to reach a safe harbor against liability. The proposed Rule adds three additional requirements. The first of these states, ...“sellers and telemarketers must obtain and reconcile on not less than a monthly basis the names and/or telephone numbers of persons who have been placed on the Commission’s national registry.” This may be a reasonable requirement for large telemarketing operations with sophisticated systems. However, it would be a cumbersome and time-consuming requirement for small business owners. A small business owner may have to crosscheck thousands of names manually on a monthly basis in order to comply. Those without the time or resources would be in violation of the Rule. As a result, small business owners could face large monetary losses due to frivolous lawsuits.

Business-to-Business Exemption

The Commission states, “Small business have proven eager to join the online revolution, but are unable to distinguish between offers from legitimate sellers and those extended by fraud artists. Therefore, the proposed Rule also makes the business-to-business exemption unavailable to telemarketers of Internet Services and Web services.” While NFIB applauds the Commission for taking steps to protect small business owners from fraudulent activities, we feel that business-to-business exemptions should be uniform. We believe the original rule arbitrarily ‘singled out non-durable office and cleaning supplies and the proposed rule arbitrarily adds web-based Internet services to the preemption.

Thank you for keeping small businesses in mind as your review the proposed changes to the Telemarketing Sales Rule.

Sincerely,



Dan Danner
Senior Vice President
Federal Public Policy