



May 31, 2005

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

Re: TSR Fee Rule, Project No. P034305

Dear Commissioners:

Thank you for the opportunity to comment on the Federal Trade Commission's ("FTC") recent proposal to revise the fees charged to entities accessing the National Do Not Call Registry ("Registry"). This comment letter is submitted on behalf of West Corporation and its affiliates, including West Business Services, LP; West Telemarketing, LP; and West Interactive Corporation (collectively, "West"). West does not support an additional increase to the fees required to access the Registry.

As the Registry is currently set up, entities accessing fewer than five area codes may access the Registry at no cost.<sup>1</sup> According to the Notice of Proposed Rulemaking ("NPRM"), such free access was allowed, "to limit the burden placed on small businesses that only require access to a small portion of the national registry."<sup>2</sup> In addition, entities that are 'exempt' may access the Registry at no cost.<sup>3</sup>

According to the figures provided in the NPRM, through June 1, 2004, 1.85% of the entities that accessed the Registry paid for 48.90% of the \$18.1 million it cost to implement and operate the Registry. From March 1, 2004 to February 28, 2005, 1.81% of the entities that accessed the Registry paid for 67.20% of the \$18 million it cost to operate the Registry. These small percentages of entities are those who paid for access to the entire Registry. They are supporting the 89.38% and 88.82% of entities, respectively, who paid nothing to access the Registry.

The NPRM is not proposing a change to the provision in the current fee structure that all entities can access the Registry for no cost for up to five area codes. In addition, 'exempt'

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<sup>1</sup> 16 C.F.R. § 310.8(c).

<sup>2</sup> 70 FR 20850, *citing* 68 FR 45140 and 69 FR 45582.

<sup>3</sup> 16 C.F.R. § 310.8(c).

entities can continue to access the Registry for free. The FTC is asking specifically for comments on these two provisions. West supports free access to 'exempt' entities, but does not support free access for entities only accessing up to five area codes.

As stated above, free access for up to five area codes was allowed to limit the burden on small businesses. However, the NPRM indicates not all of the 52,700 entities that accessed five or fewer area codes in fiscal year 2004 were small businesses. As one alternative, West would propose a fee structure where those accessing five area codes or less be allowed access for free provided they qualify as a small business as defined by the Small Business Administration.

The NPRM states, "If all entities accessing the national registry were charged for the first five area codes of data, the cost per area code would be reduced to \$37, while the maximum amount charged to access the entire national registry would be \$10,360."<sup>4</sup> As a second alternative to the option above, if this fee structure were implemented, the maximum cost to those entities accessing five area codes would be \$185. This amount would not seem so exorbitant as to place an undue burden on small businesses. In addition, it would lessen the burden on those small businesses that are required to pay for access to the Registry because they would be paying \$37 per area code rather than \$56 under the proposed structure.

The FTC indicated if entities accessing five or fewer area codes were required to pay a fee for access, it would place "an additional burden on the registry, requiring the expenditure of more resources to handle properly that additional traffic."<sup>5</sup> If an additional burden will result from all entities being required to pay some amount to access the Registry, West recommends the FTC analyze what the additional financial burden would be and set the fees accordingly. While the result may be something higher than the \$37 per area code up to a maximum of \$10,360 noted above, it will, in all likelihood, be less than the proposed \$56 per area code up to a maximum of \$15,400.

The NPRM assumes those entities that currently access the Registry will continue to do so at the increased fees. However, some entities that currently pay for access to the Registry but are not required to may discontinue that practice as the fees increase. While West understands the FTC's obligation to follow the mandate of the Regulatory Flexibility Act, it is inequitable to require so few entities to support the Registry for the use of so many.

West appreciates the opportunity to comment on these proposed amendments to the TSR. Should you have any questions about our comments, please do not hesitate to call me at (402) 965-7113. Thank you.

Sincerely,

Janette K. Nelson  
Associate Counsel – Compliance  
West Corporation  
11808 Miracle Hills Drive

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<sup>4</sup> 70 FR 20850, fn. 25.

<sup>5</sup> 70 FR 20850.

Omaha, NE 68154  
(402) 965-7113  
Fax: (402) 963-1211