

**Before the
FEDERAL TRADE COMMISSION
Washington, D.C. 20580**

**COMMENTS
OF THE**

DIRECT MARKETING ASSOCIATION, INC.

AMERICAN TELESERVICES ASSOCIATION

NEWSPAPER ASSOCIATION OF AMERICA

**TELEMARKETING SALES RULE FEES
TSR Fee Rule, Project No. P034305**

(Notice of Proposed Rulemaking on User Fees for the Do Not Call Registry)

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The Direct Marketing Association (“The DMA”), the American Teleservices Association (“ATA”), and the Newspaper Association of America (“NAA”) (collectively the “Associations”) appreciate the opportunity to submit these comments on the Federal Trade Commission’s (“Commission”) notice of proposed rulemaking to revise the fees charged to entities that access the federal Do Not Call Registry.

In this notice of proposed rulemaking (“NPRM”), 70 Fed. Reg. 20848, April 22, 2005, the Commission proposes, for the [third time] in less than two years, to raise fees imposed on telemarketers to fund the national do-not-call registry. While the Commission has obtained authority from Congress to collect fees up to \$21.9 million, the Associations do not believe that such continued runaway fees passed on to telemarketers are justified at this time.

The Associations would like to make the following points, set forth in more detail below, in response to the Commission’s request for comments:

- An increase in fees is unwarranted at this time. The Commission’s current fees are sufficient to administer the do-not-call registry.
- The Commission should not use fees collected from telemarketers for enforcement or other purposes.
- The Commission should continue to allow entities to access the registry for five area codes or fewer at no charge.
- Costs associated with wireless numbers placed on the registry should not be passed on to telemarketers through this fee.

A. *A Further Increase in Fees Imposed on Telemarketers to Access the Do-Not-Call Registry is Unwarranted.*

The Commission should not adopt the proposed increase in fees. Such a fee increase is unjustified at this time and is unnecessary for continued operation of the registry. While the Commission has the authority to collect up to \$21.9 million, the Commission is not required to collect fees up to this amount, which was authorized by Congress. If the Commission can

continue to pay for the registry at the \$18.1 million cost from last year, it should continue the current fee structure. The Associations believe that \$18.1 million is more than sufficient funding for the Commission to operate the registry.

The Commission initially indicated its belief that it would cost a few thousand dollars per telemarketer to obtain access to the national registry. By the time the Commission made the registry available, the cost for access had already increased to \$7,250. Less than a year later, the Commission increased fees 68% to \$11,000 for the registry. Now, yet again, the Commission proposes a 40% increase to \$15,400.

The current fees collected from entities for access to the do-not-call registry provide more than sufficient resources for the Commission to administer the registry. The Commission proposes to raise fees for access to the national registry by \$4,400, and derives this number by estimating the number of telemarketers likely to pay for access to the registry and how much each entity would have to pay to total the \$21.9 million authorized by Congress. Other than reflecting the increase in the annual congressional authorization from \$18.1 million to \$21.9 million, the Commission provides no justification for any increase in these fees. The Commission has not indicated in the NPRM that costs to run the registry have increased or that enforcement or other costs have increased.

As stated in prior comments responding to proposed fee increases, The DMA is experienced in running its own list, the Telephone Preference Service (“TPS”), as well as in administering the lists in Connecticut, Maine, and Wyoming. This experience indicates a much less costly means of running a registry. The DMA’s entire list is available for entities to purchase for \$700 per year. While the Commission’s registry contains many more numbers than does the TPS, the \$15,400 fee proposed by the Commission, more than 22 times the cost of the

TPS, is not justified by the incremental costs that correspond to the increased amount of numbers on the registry.

B. The Commission Should Not Use Additional Resources to Enforce the TSR

An analysis of the costs to run the registry and the amount proposed to be collected by the Commission indicates that the majority of the money spent will be on enforcement and other costs. The FTC's contract with AT&T in 2003 to establish and administer the database was \$3.5 million. It has never been clear why costs beyond those charged by AT&T should be passed on to telemarketers. Even if there were some amount incurred in administrative costs for Commission staff to run the registry, it is unclear why those costs would need to be six times the amount paid to AT&T.

The Commission uses the money received beyond the AT&T costs to "implement and enforce the TSR." The Associations are concerned that fees are being used for telemarketing enforcement based on fraud or other violations of the TSR, where there may also be an incidental violation of the registry. Such enforcement actions should not be funded by registry fees when they otherwise would have been funded from other enforcement budgets prior to the existence of the registry. Fees collected for access to the registry provide the Commission with a means of reallocating its enforcement budget previously used for telemarketing enforcement to other areas. For example, the Commission is increasing its enforcement in spyware, spam, and other areas. The Associations strongly support increased enforcement efforts in these and other areas. However, the Associations believe that such costs should be borne by all taxpayers, not only by those taxpayers who are complying with the TSR.

The Commission has noted the significant compliance rate of telemarketers with the registry. The Associations believe it is inappropriate for entities that comply with the law to bear

the enforcement costs of the FTC. If the do-not-call registry is as successful as the FTC indicates, the FTC itself or Congress should provide any additional necessary funding increases over the current fee structure. Imposing the \$15,400 fee for access to the national registry on industry to engage in telemarketing is not what Congress intended when it passed the initial telemarketing legislation in 1993, indicating that the Commission should strike an “equitable balance between the interest of stopping deceptive...and abusive telemarketing activities and not unduly burdening legitimate businesses.”¹

C. Telemarketers Should Not Pay the Portion of Running the Do-Not-Call Registry Resulting From Wireless Numbers Being Placed on the Registry

Increased costs to administer the registry that result from the inclusion of wireless numbers on the registry should not be passed on to telemarketers; such costs should be borne by the Commission. The Commission and the Federal Communications Commission (“FCC”) had encouraged and now allow individuals to place their wireless numbers on the do-not-call registry. Telemarketing calls to wireless numbers without consent are prohibited under the FCC’s rules implementing the Telephone Consumer Protection Act of 1991 (“TCPA”), 47 U.S.C. §§ 227 *et seq.* Thus, as a legal matter, consumers receive no fewer telemarketing calls by placing their wireless numbers on the registry. Because such calls already are prohibited in the first instance, there is no basis for allowing such numbers to be placed on the registry.

Without providing any consumer benefit, the addition of wireless numbers to the registry results in increased costs to businesses. Since the Commission has decided to allow such numbers to be placed on the registry even though telemarketing calls to these numbers already are prohibited, the resulting costs should not be borne by telemarketers. Telemarketers already

¹ H.R. Rep. No. 103-20, at 2 (1993).

are bearing the costs of having to download registries that contain far more numbers than would otherwise be the case if wireless numbers were not included.

D. Entities Should Have Continued Access to Up to Five Area Codes at No Cost

The ability for telemarketers to obtain the first five area codes from the registry at no cost should be kept in place. The large number of entities that access the registry at no cost are small businesses that telemarket their services to those in the community. These companies, which have been able to survive the reduced calling base created by the do-not-call registry, should not be forced to pay fees for the Commission to use in bringing enforcement actions against bad actors. Additionally, the fact that small businesses are able to access up to five area codes at no cost encourages their compliance.

Especially hard hit by this fee increase will be the smaller businesses that access more than five area codes; these companies may not have the financial resources to purchase the list. The entrepreneurial spirit of these companies should be encouraged rather than impeded. The proposed increased costs associated with conducting telemarketing as a result of these additional registry fees will reduce the number of businesses that telemarket and, correspondingly, the number of entities that pay for the registry. If consistent with the FTC logic for increasing fees, this will result in a need to raise subscription fees again.

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For these reasons, the Associations respectfully request the Commission to reconsider its proposal to significantly raise the user fees for the Do Not Call Registry to adjust the amount needed to run the registry.

The Direct Marketing Association (www.the-dma.org) is a leading trade association for businesses and organizations interested in direct, interactive, and database marketing, which in 2003 generated more than \$1.7 trillion in US sales, including \$134 billion in catalog sales and \$41 billion in Web-driven sales. In addition to catalogs and the Web, DMA members employ a wide variety of marketing media, including mail, e-mail, telephone, newspapers and magazines, interactive television, and radio, among others. Founded in 1917, The DMA today has more than 5,200 corporate, affiliate, and chapter members from the U.S. and 44 other nations. Reflecting the significant and growing role that direct and interactive marketing plays in today's advertising mix, The DMA's membership represents marketers from every business segment, including catalogers, Internet retailers, retail stores, nonprofit organizations, advertising agencies, financial services providers, book and magazine publishers, book and music clubs, industrial manufacturers, and a host of other vertical segments, as well as the service industries that support marketers.

The American Teleservices Association is a leading trade association dedicated exclusively to the teleservices industry. Its member organizations include both Fortune 500 companies and small businesses that market their respective products and services to consumers by telephone. ATA's membership also is comprised of call centers, trainers, and equipment suppliers that initiate, facilitate, and generate the calls.

The Newspaper Association of America is a nonprofit organization representing the \$55 billion newspaper industry and more than 2,000 newspapers in the U.S. and Canada. Most NAA members are daily newspapers, accounting for 87 percent of the U.S. daily circulation. Headquartered in Tysons Corner (Vienna, Va.), the Association focuses on six key strategic priorities that affect the newspaper industry collectively: marketing, public policy, diversity,

industry development, newspaper operations and readership. Information about NAA and the industry also may be found at www.naa.org.