

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

In the Matter of	)	
	)	
TSR Fee Rule	)	Project No. P034305
	)	
Prepared By:	)	
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**COMMENTS OF INFOCISION MANAGEMENT CORPORATION, INC., ON THE  
PROPOSED REVISION TO FEES FOR PURCHASE OF THE NATIONAL “DO-NOT-  
CALL” REGISTRY**

Infocision Management Corporation, Inc., (“IMC”) objects strenuously to any increase in the fees charged by the Federal Trade Commission for access to the National “Do-Not-Call” Registry. The Commission’s proposal to raise fees is not justified by the record, unfairly places the burden for paying for enforcement not on law breaking entities but on compliant entities, and disproportionately affects a small number of businesses. The proposed fee structure opens the Commission to a constitutional challenge and should be revised to more equitably distribute the financial burdens of the list.

The FTC’s proposal to substantially increase fees for companies that purchase the list because the number of those companies was fewer than originally estimated is flawed and unfair.

The Commission should revise the proposal to more equitably spread the cost of the list, as well as to not punish, and place more burdens upon, companies which strive to be compliant.

IMC proposes four changes to the Commission’s proposal, each of which would allow it to raise the \$18.1 million it claims to need to operate the Registry and reduce the burden unnecessarily and unfairly applicable to IMC and other businesses implementing nationwide compliance with the Registry. Each of these proposals would also improve service for consumers who wish to add their number to the Registry.

First, the Commission should require a nominal fee to include a telephone number on the Registry. Second, the Commission should reduce the number of “free” area codes to more equitably distribute the cost on compliant businesses. Third, the Commission should impose a portion of the expense of the Registry on noncompliant businesses and should account for these

finances in its fee structure for the Registry. Fourth, the Commission should explicitly state that the Registry is the sole “do-not-call” list applicable to national interstate calls.

## **I. INTRODUCTION TO INFOCISION**

IMC's goal is to provide commercial marketing clients with the highest quality inbound teleservices, outbound teleservices and e-services...period.

IMC raises more money for nonprofit organizations than any other telephone marketing company in the world. We also have an unmatched reputation for quality, integrity and customer service. The mission of IMC is to be the highest quality teleservices provider of the 21<sup>st</sup> Century as well as a model corporate citizen. IMC has filed comments regarding every stage of implementation of the Registry and is unmatched in its compliance efforts in the area. IMC would welcome the opportunity to provide the Commission any additional information relevant to these comments and its experience with legal compliance.

The Commission should consider the comments and ideas of companies like IMC, as self-regulating companies with high standards of compliance will largely affect the success of the list.

## **II. COMMENTS**

The Commission originally estimated that 10,000 entities would purchase access to the National “Do-Not-Call” Registry. Notice of Proposed Rule Making, p. 5. Although more than 52,000 entities have accessed at least part of the Registry, only approximately 6,000 have paid for this access. The vast majority of entities which have accessed the list have taken advantage of the Commission’s provision allowing access to five area codes at no charge. Notice of Proposed Rule Making, p. 5. Only slightly more than 1,100 entities, or 2% of the total accessing companies, have paid for the entire Registry. Notice of Proposed Rule Making, p. 6. IMC is included in this last group.

More than 55 million numbers are now included on the Registry. Federal Trade Commission, National “Do-Not-Call” Registry Information, “Compliance with National “Do-Not-Call” Registry Exceptional”, <http://www.ftc.gov/opa/2004/02/dncstats0204.htm> (May 25, 2004).

The Commission has proposed raising the maximum fee for the list, applicable to 2% of companies accessing the list, from \$7,250/year to \$12,375/year, an increase of more than 70%. Notice of Proposed Rule Making, p. 7.

### **A. THE COMMISSION SHOULD IMPLEMENT A NOMINAL CHARGE TO ADD A NUMBER TO THE “DO-NOT-CALL” REGISTRY.**

As written, the Telemarketing Sales Rule, 16 CFR §310.8, does not require consumers to pay a fee to subscribe to the National “Do-Not-Call” Registry. IMC urges that the Commission implement a nominal \$1 charge to add a number to the Registry (for a period of five years.)

Assuming that there are 55 million numbers on the list, this nominal charge, amounting to 20 cents per number per year, would have two important benefits to continued operation of the Registry. First, the \$55 million raised would cover more than half of the cost to operate the Registry (assuming \$18.1 million/year.) While recognizing that the privacy interests of consumers remains important, it is still consumers who desire the Registry and who derive its intended benefit.

Second, the nominal charge would prevent duplicate numbers and numbers improperly included in the Registry such as business numbers and numbers added to the Registry without authority from the holder of the number. The nominal charge would also offset costs which directly benefit consumers such as consumer education campaigns and “agency infrastructure and administration.” Notice of Proposed Rule Making, p. 6.

Offsetting the costs of implementation and empowering consumers to protect their own privacy by charging a nominal fee to be placed on a “do-not-call” registry has been adopted in some states, including Florida, which has operated its state “do-not-call” list longer than every other state (and the FTC). Currently, Florida law provides that the Division of Consumer Services, upon receipt of a \$10.00 initial listing charge, may place:

Any residential, mobile, or telephonic paging device telephone subscriber desiring to be placed on a ‘no sales solicitation calls’ listing indicating that the subscriber does not wish to receive unsolicited telephonic sales calls may notify the department and be placed on that listing...

Fla. Stat. § 501.059(3)(a). Florida law also requires a renewal notice and a \$5.00 assessment. *Id.*

IMC therefore proposes a new section be added to 16 CFR §310.8 at (f): “Any person whose telephone number is within a given area code may add his or her name to the Registry for a fee of \$1. Upon verification that the person has legal authority to add this number to the Registry, the number shall be added.”

IMC would be happy to provide its analysis of the Registry showing duplicate and other numbers, such as business numbers, which are improperly included. A nominal fee would reduce the incentive and ability of any person to improperly add numbers to the Registry, as well as offset the compliance burden currently falling on a tiny minority of businesses accessing the Registry.

**B. THE COMMISSION SHOULD REDUCE THE NUMBER OF FREE AREA CODES TO MORE EQUITABLY SHARE THE FINANCIAL BURDEN OF THE REGISTRY.**

The Commission originally ruled that the first five areas codes of data are provided at no cost. 16 C.F.R. 310.8(c). That number should be adjusted downward from five to three.

The FTC believed that “...five area codes [was] an appropriate compromise between the goals of equitably and adequately funding the “Do-Not-Call” Registry on one hand, and

providing appropriate relief...” for a majority of those entities accessing the Registry on the other. 68 Fed. Reg. at 16243.

It is now clear that the vast majority of those accessing the “do-not-call” Registry should share more of its cost. A minority of those accessing the “do-not-call” Registry are disproportionately and unduly burdened with the costs of its implementation and enforcement simply because of their national compliance efforts.

The number of area codes accessed, however, is not directly related to the size of the business, nor its ability to pay. A large real estate company, for example, might only sell property in five area codes, but be much larger than a small long distance company offering nationwide service. The Commission should adjust this number to reduce the unfair impact of the current fee structure.

Reducing the number of free area codes from five to three would not cause a financial hardship for the majority of companies whose costs would increase by less than \$100 per year even using the new fee of \$45 per area code. By applying a nominal fee to these businesses, the Commission will spare IMC and the other 2% of companies implementing nationwide compliance programs from an unfair burden.

**C. THE COMMISSION SHOULD INCORPORATE FINES INTO ITS FEE STRUCTURE TO DISTRIBUTE THE BURDEN OF THE REGISTRY BEYOND COMPLIANT BUSINESSES.**

The Commission has proposed a fee increase for access to the Registry in part to pay for enforcement efforts. Notice of Proposed Rule Making, p. 6. Assessing fees on compliant businesses like IMC for enforcement efforts against noncompliant companies obviously punishes compliant businesses unfairly and perversely encourages companies to violate the Registry.

The fee proposal does not account for any funds obtained through enforcement actions, despite the fact that the FTC can levy fines of more than \$11,000 per violation for noncompliance. “Complying with the Telemarketing Sales Rule”, p. 54. As written, any fines levied would result in a windfall and unfairly penalize compliant companies.

The Commission should revise its fee proposal to account for anticipated fines obtained and to place the financial burden for noncompliant companies on those noncompliant companies, not on IMC and the other 2% of companies implementing nationwide compliance systems.

**D. THE COMMISSION SHOULD REDUCE THE DUPLICATIVE BURDEN ON NATIONWIDE COMPLIANT BUSINESSES BY EXPLICITLY RULING THAT THE REGISTRY GOVERNS INTERSTATE TELEPHONE CALLS.**

The Commission should also clarify that the Registry is the sole “do-not-call” list (besides a company’s internal “do-not-call” list) applicable to interstate calls. Currently, many states still attempt to enforce duplicative state “do-not-call” lists against interstate calls. These lists do not aid consumers who would benefit from a single location where they need to register

businesses which are faced with multiple duplicative and expensive fees for state lists, or government. States are clearly authorized to protect their citizens by enforcing the terms of the Federal Registry. 16 C.F.R. §310.7.

The following chart summarizes the duplicative fees applicable to IMC and other businesses with nationwide compliance programs. The FTC should clarify that Federal law preempts these state lists with regard to interstate calls to protect both businesses and consumers from needless expense. This chart shows the substantial fees assessed by states for access to their lists (which duplicate the Federal list). In some cases, these states charge substantially more for their list than the FTC does for the Registry (see e.g. Wisconsin which charges up to \$20,000 for access to its list).

State	Contact Information	Fee
Alabama	Alabama Public Service Comm'n 100 N. Union Street, Suite 838 Montgomery, AL 36104 (334) 242-5211	Federal fee applies.
Alaska	Alaska Communications Systems 600 Telephone Ave. Anchorage, AK 99503-6011 (907) 564-1870 Anchorage (907) 564-1133 So. Central (907) 761-2635 Other (907) 265-5600	\$31.00 (Anchorage) \$50.00 each (Fairbanks, Juneau, Kenai, Kodiak, North Pole, and Sitka)
Arizona	Arizona has adopted the FTC list to apply to intrastate calls.	
Arkansas	Office of the Attorney General Do-Not-Call List Administrator 323 Center Street, Suite 200 Little Rock, AR 72201-2610	Federal fee applies
California	Office of the Attorney General	Federal fee applies
Colorado	Public Utilities Commission 1580 Logan Street, Office Level 2 Denver, CO 80203 (303) 894-2000	\$0-\$500 Annually (sliding fee scale depending on number of employees in company)  No fee to nonprofit organization or list Brokers.
Connecticut	Christine Wnuk List Preferences Services Direct Marketing Association, Inc. (DMA) 1120 Avenue of the Americas New York, NY 10036-6700 (212) 790-1437	\$465.00 Annually (CD-ROM); List must be obtained quarterly
Florida	Department of Agriculture and Consumer Services No Sales Solicitation 407 S. Calhoun Street Mayon Building, 2 <sup>nd</sup> Floor Tallahassee, FL 32399-0800 (850) 410-3687	\$100.00 Quarterly (Statewide listing); \$30.00 Quarterly (Per specific area code)
Georgia	Georgia Public Service Commission P.O. Box 105559 Atlanta, GA 30348	\$10.00 Annually (for access to web site); \$50.00 (Quarterly CD distribution of database)

	1-877-GANOCALL	
Idaho	Attorney General Idaho Consumer Protection Unit 650 W. State Street, Room B-20 P.O. Box 83720 Boise, ID 83720-0010 (208) 334-2424	\$25.00 Quarterly
Illinois	Illinois Commerce Commission 1-800-524-0795	Federal fee applies
Indiana	Office of the Attorney General Consumer Protection Division 402 W. Washington St. Indianapolis, IN 46204 (317) 232-6201	\$750.00 Annually
Kansas	Kansas Attorney General Carla J. Stovall 120 S.W. 10 <sup>th</sup> Avenue, 2 <sup>nd</sup> Floor Topeka, Kansas 66612-1597 (785) 296-2215 Fax: (785) 296-6296 Contact: Joe Molina or list administrator:	Federal fee applies
Kentucky	Office of the Attorney General Consumer Protection Division 1024 Capital Center Drive Frankfort, KY 40601 (502) 696-5479	There is no fee for telemarketers to obtain the "Zero Call List"
Louisiana	Louisiana Public Service Commission One American Place, Suite 1630 P.O. Box 91154 Baton Rouge, LA 70821-9154 (225) 342-4404	\$800.00 Annually \$20,000 (Bond)
Maine	Attorney General-Division of Consumer Protection and Christine Whuk List Preference Services Direct Marketing Association, Inc. (DMA) 1120 Avenue of the Americas New York, NY 10036-6700 (212) 790-1437	Federal fee applies.
Massachusetts	Office of Consumer Affairs and Business Regulation	\$1100.00
Michigan	Michigan Public Service Comm'n (517) 241-6180	Federal fee applies.
Minnesota	Department of Commerce 85 7 <sup>th</sup> Place East, #500 St. Paul, MN 55101 (651) 296-2594	\$125.00 Quarterly (fee only applies if not required to purchase Federal list)
Mississippi	Mississippi Public Service Commission	\$800.00 Annually (via Internet) \$1000.00 Annually (paper copy) \$50,000 Bond First list available Sept. 10, 2003
Missouri	Office of the Attorney General Wainwright State Office Building 111 N. 7 <sup>th</sup> Street, Suite 204 St. Louis, MO 63101	\$150.00 Quarterly (all 6 area codes) or \$25.00 Quarterly (per area code)

	Toll Free (866) 289-9633	
Montana	Department of Administration	Fee to be determined. Effective Jan. 1, 2004
Nevada	Office of the Attorney General	Federal fee applies, but AG may choose to adopt state list at later time.
New Hampshire	Office of the Attorney General Consumer Protection Bureau	Federal fee applies.
New Jersey	Department of Law and Public Safety—Division of Consumer Affairs	Federal fee applies
New Mexico	Office of the Attorney General	Federal fee applies.
New York	State Consumer Protection Bd. 5 Empire State Plaza, Suite 2101 Albany, NY 12223-1556 (518) 474-8583	Federal fee applies.
North Carolina	Office of the Attorney General	Federal fee applies.
North Dakota	Office of the Attorney General	Federal fee applies.
Oklahoma	Office of the Attorney General 2300 N. Lincoln Blvd., Ste 112 Oklahoma City, OK 73105 (405) 522-3382	\$150.00 Quarterly or \$600.00 Annually
Oregon	Department of Justice—Consumer Fraud Protection Division Oregon No Call P.O. Box 12549 Salem, OR 97309 (877) 700-6622	Federal fee applies.
Pennsylvania	Office of the Attorney General Public Protection Division Strawberry Square—14 <sup>th</sup> Floor Harrisburg, PA 17120  Christine Wnuck List Preference Services Direct Marketing Association, Inc. (DMA) 1120 Avenue of the Americas New York, NY 10036-6700 (212) 790-1437	\$465.00 Annually
South Dakota	S. D. Public Utilities Commission Capitol Building, 1 <sup>st</sup> Floor 500 East Capitol Avenue Pierre, SD 57501-5070	Federal list used.  Registration with State PUC required—\$0-\$500 Annually (sliding fee scale depending on number of employees in company)
Tennessee	Tennessee Regulatory Authority 460 James Robertson Parkway Nashville, TN 37243-0505 (615) 741-3939 (Ext. 162)	\$500.00 Annually
Texas	Texas Public Utility Commission 1701 N. Congress Ave. P.O. Box 13326	No-Call List: \$45.00 Quarterly

	Austin, TX 78711-3326	Electric No-Call List (applies to retail electric providers): \$50.00 Quarterly
Utah	Department of Commerce Division of Consumer Protection Heber M. Wells Building, Second Floor 160 East 300 South SM 146704 Salt Lake City, Utah 84114 801-530-6601 fax: 801-530-6001	Federal fee.
Vermont	Christine Wnuck Direct Marketing Association, Inc. (DMA) 1120 Avenue of the Americas New York, NY 10036-6700 (212) 790-1437	Federal fee
Wisconsin	Department of Agriculture, Trade and Consumer Protection 2811 Agriculture Drive P.O. Box 8911 Madison, WI 53718 (608) 224-4949	\$700 for first year; \$500 for subsequent years; additional fees capped at \$20,000 may apply depending upon requests for additional copies of the list and number of lines.
Wyoming	Attorney General and Christine Wnuck List Preference Services Direct Marketing Association, Inc. (DMA) 1120 Avenue of the Americas New York, NY 10036-6700 (212) 790-1437	\$465.00 Annually (CD-ROM); List must be obtained quarterly.

It is well settled that interstate calls are properly regulated by Federal law (the FCC’s Telephone Consumer Protection Act and the Telemarketing Sales Rule).

When it passed the TCPA, Congress was explicit regarding Federal jurisdiction over these calls: “[S]tates do not have jurisdiction over interstate calls.” Legislative History, S. Rep. No.102-178, p. 3. Further, Senate Report 102-177 repeats the claim under “the need for legislation” that:

As a result, over 40 States have enacted legislation limiting the use of automatic dialers or otherwise restricting unsolicited telemarketing. These measures have had limited effect however, because States do not have jurisdiction over interstate calls. Many States have expressed a desire for Federal legislation to regulate interstate telephone calls to supplement their restrictions on intrastate calls.

102 Senate Report 177 (page 3) (emphasis added).

Next, the comments of Senator Hollings concerning the TCPA are set forth in the Congressional Record at 137 Cong. Rec. S. 18781 as:

Section 227(e)(1) clarifies that the bill is not intended to preempt State authority regarding intrastate communications except with respect to the technical standard under § 227(d) and subject to § 227(e)(2). Pursuant to the general preemptive

effect of the Communications Act of 1934, State regulation of interstate communications, including interstate communications initiated for telemarketing purposes, is preempted.

Id. at page 10 (emphasis added).

There is no logical purpose behind multiple lists applying to a given call when states can enforce the Federal Registry. The FTC should aid businesses and consumers by expressly eliminating this needless expense and stating that the TSR preempts state law with regard to interstate telephone calls.

### **III. CONCLUSION**

The Commission should revise the proposal to more equitably distribute the cost of the Registry. As proposed and implemented, 2% of businesses implementing national compliant programs, bear most of the burden of paying for the list. This is unfair and illogical. It is also unfair to increase fees on these entities by 70% without considering other sources of funds for the Registry.

IMC would welcome the opportunity to provide any additional information the FCC requests regarding these comments.