

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

**COMMENTS  
OF THE  
DIRECT MARKETING ASSOCIATION, INC.**

**TELEMARKETING RULEMAKING---REVISED FEES  
TSR Fee Rule, Project No. P034305**

**(Revised Notice of Proposed Rulemaking on User Fees for Telemarketing Sales  
Rule)**

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In its notice of proposed rulemaking, published on April 20, 2004, 69 Fed. Reg. 23701, the Federal Trade Commission (the "Commission" or the "FTC") proposed to increase the fees that must be paid in order to obtain the national Do-Not-Call List (the "DNC List").

While the FTC has obtained authority from Congress to collect fees for the DNC List in the Do-Not-Call Implementation Act, Pub L. No. 108-10 (2003) and in the Consolidated Appropriations Resolution of 2003, Pub L. No. 108-7 (2003), the fee proposal in question raises serious questions regarding the fairness of placing such an overwhelming and unmanageable burden upon a single industry.

The DNC List has only been in operation for nine months. The Commission proposes to raise the fees to purchase the list by **68%**. This is an exponential increase that comes, literally, in the infancy of the system set up in Fall 2003 by the FTC.

The effect of such an increase upon the teleservices industry would be economically devastating. The industry, over the past nine months has worked diligently within the regulatory system set up by Congress and the Commission. During this period, there has been a considerable "shakeout" in the industry. Companies have had to change their business practices and plans as the DNC List added tens of millions of numbers. Sadly, some companies could not continue and left the industry.

But, most in the teleservice industry persevered and has followed the letter and spirit of the DNC List. They purchase the List from the FTC and scrub the List as required. The Commission has noted publicly how the DNC List has been a success as evidenced by the lower volume of calls to consumers on the List and enforcement actions where necessary. In fact, there has been massive compliance by the teleservices industry according to the Commission.

Now, the proposed 68% increase in costs to access the fees, threatens the continued viability of the telemarketing industry. Simply put, if this extremely large increase is put into place, there will be a substantial amount of firms that may decide that it is cost prohibitive to stay in this industry.

Especially hard hit would be smaller teleservice companies whose entrepreneurial spirit should be encouraged rather than impeded. These companies, who may have been able to weather the reduced calling base created by the DNC List, will not have the financial resources to continue to purchase the List. Others may very well be discouraged by such a significant raise in fees after only nine months of operation and choose another medium of marketing communications.

The bottom line here is that the increased costs associated with conducting telemarketing as a result of these additional List fees will reduce the pool of payers. It stands to reason that, as the number of buyers of the DNC List goes down, the cost

structure of the National Registry will have to be pegged even higher. This creates a vicious circle, which benefits no one.

The telemarketing industry needs and deserves regulatory certainty that the fees it pays to access the DNC List will not be raised by any amount and at any time interval that the FTC determines is proper. In its initial proposal, the FTC presented the DNC List as a trial program to be evaluated after two years. 67 Fed. Reg. at 4517. We firmly believe that the Commission should adhere to its promise and commit to not raising fees on industry for at least two years.

Industry needs to be able to evaluate its regulatory compliance costs in advance and should not bear the risks of cost overruns by the FTC, its contractor or a diminishing pool of payers.

As the Commission is aware, The DMA has substantial experience with running a national do-not-call list. Our Telephone Preference Service (TPS) has been in effect for 18 years. Any person or entity may purchase the entire list for \$700 per year. The current national DNC List purchase price is already ten times that amount. To request to increase the purchase price by 68% in its ninth month of operation is unacceptable to the telemarketing industry.

In examining the legislative history, there is no Congressional intent that the FTC should recoup all \$18.1 million that Congress authorized it to collect as user fees. Congress did not estimate the costs for fiscal year 2003 at \$18.1 million. 68 Fed. Reg. At 16238. Rather, Congress authorized the costs the FTC to collect fees *up* to \$18.1 million.

The Commission estimated an \$18.1 million expense not only to establish the List, but also to establish an enforcement program that included space costs, computers, personnel, and supplies. Now after 9 months, the FTC should reevaluate the need for this enforcement program. The industry is complying. To continue this demand for \$18.1 million in light of industry efforts changes the “fee” from a user fee to a tax on law-abiding telemarketers to combat fraud. That was not what Congress intended. Congress authorized a user fee not a tax. The fee should include only the costs to run the List, which is composed primarily of the 3.5 million dollars awarded to AT&T to administer the list. Combating fraud should be funded from the FTC appropriation just as it is for other consumer protection programs.

Moreover, a much lower fee is also need to conform with Supreme Court First Amendment jurisprudence on monetary restrictions on speech.

The imposition of a 68% increase in DNC List fees really amounts to a user tax upon the telemarketing industry. It is a user tax with no cost/casual relationship to the product (the List) itself. It places an unfair burden upon the telemarketing industry. The exponential increase does not help in any way in the effort to enforce the Telemarketing Sales Rules who use abusive telemarketing practices or commit fraud.

For these reasons, The DMA respectfully requests the Commission to reconsider its proposal to significantly raise the user fees for the DNC List and to adjust the amount needed to run the List.

Respectfully submitted,

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