

April 15, 2002

Office of the Secretary
Federal Trade Commission

Telemarketing Rulemaking Comment
FTC File No. R411001
Via email tsr@ftc.gov

1. These comments are submitted on behalf of the National Newspaper Association (NNA) to provide comment on the Federal Trade Commission's proposed amendments to its Telemarketing Sales Rule, 16 CFR Part 310.

2. The NNA is the oldest and largest community newspaper association in the country. The NNA represents the owners and publishers of 3,200 community newspapers nationwide. Most are family-owned and operated, and have circulation under 10,000 copies in a typical issue. They specialize in local news and advertising and they provide the mortar that holds small towns together. Newspapers use telemarketing to sell subscriptions and other products and services to customers, both to individuals and to local businesses. They may also use telemarketing for such simple exercises as contacting the advertiser in the classified columns to find out whether the used bicycle has been sold yet, the golf clubs remain available for sale and the child care query is yet unfulfilled—and to inquire whether the advertiser wishes to renew the small classified ad. Although many telemarketing campaigns are purely intrastate matters, many also cross state lines—either in reaching existing or potential customers or through use of out-of-state telemarketing consultants.

3. Telemarketing to potential and renewing customers is a longstanding, legitimate marketing practice that is an important component of the local economy, and one that aids in helping newspapers to keep their citizens informed. Although NNA is an independent organization of newspapers, it supports the comments of the Newspaper Association of America in its concern about the proposed amendments and adds its own comments on the impact upon small newspapers and the importance of newspapers to local communities.

4. Newspaper executives both as business owners and as customers are well aware of the abusive practices of some telemarketing operations that may focus suspicion upon others. Complaints about poor telemarketing techniques are easy to find in almost any consumer audience. However, bad actors should be pursued according to existing rules and regulations without creating a new burdensome regulatory scheme. If a new scheme is

justified--and NNA is not persuaded that it is-- it should recognize and mitigate the burdens of compliance.

5. Industry self-regulation, state rules and consumer self-help all play a role in protecting consumers from abusive practices, and these must be given appropriate weight before launching an expensive two-year experiment.

6. NNA often surveys its members for opinions on developing public policy. Our informal canvassing indicates that newspapers experience an extraordinarily low level of complaints from readers and potential readers about their telemarketing practices. The history suggests that this is one industry that might unfairly be targeted in this contemplated regulatory scheme by overzealous enforcement.

7. One of NNA's member publishers states that he "always ties my campaign to a local charity, school project or other such worthwhile undertaking and give a portion of our sales during the campaign to the chosen cause." It is not uncommon for newspapers to do so--and the charitable organizations they choose are typically in their own communities. These organizations benefit at no cost from the telemarketing activities. Such local campaigns are good for local communities and their nonprofit organizations. Newspapers have a proud history of spearheading such campaigns. Our members pointed out when they first learned of the potential of federal action that the proposed rule would chill such partnerships and deprive local nonprofits of a needed revenue stream.

8. The FTC's proposal seeks to establish a national "do-not-call registry" that would allow consumers to have their names added to a single database. This database would then presumably be shared with those wishing to engage in telemarketing so those lists could be scrubbed in advance of calls. This seems innocuous in concept.

9. But many operational barriers remain between such a list and compliance. For one, most small newspapers--like many small businesses--operate from a variety of list-keeping programs, some as simple as word-processing programs that have no merge/purge capabilities. Indeed, in our industry where some newspapers have remained in the same families for more than a century, some lists are not computerized at all.

10. For another, many newspapers have staffs as small as three or four persons--and none with much computer skill. The mechanics of performing database matches will be simply beyond some newspapers that use their computers for writing and editing and do not have the luxury of experienced database programmers to manage compliance with the proposed rule. Community newspapers do not have thousands of dollars to spend on such resources because their resources are already stretched to provide valuable news and information locally.

11. Also, newspaper databases typically have no need for updated telephone numbers--only addresses--until the time for a telephone campaign arrives. Updates may occur only as calls are made, and the caller notes changes on a hard-copy list. In such cases, a computerized match would fail to catch some DNC requesters.

12. Finally, in an industry with many small family-owned businesses, we can assume that awareness of a new compliance burden will take a period of years to reach all owners. Penalties will mount, even against publications that have had a zero-complaint record, before full education of the industry has occurred.

13. As one of NNA's smaller members articulated when learning of the FTC's decision to implement a national do-not-call registry, a broad, sweeping rule with financial penalties would be a hardship for those newspapers that come under the rule. Overcoming the barriers listed above for businesses that may conduct a telemarketing campaign annually or less often creates a cost that can hardly be justified by a public policy need.

14. For businesses that have a prior business relationship with customers, as many newspapers have with loyal subscribers, it is troubling that a new national registry could possibly conflict with such a relationship. It is not clear that consumers requesting DNC status would necessarily assume their local newspaper would be barred from contacting them--even to remind them of renewal time. Even existing customers could be lost to newspapers, despite their desire to continue to learn of new products and services offered. An exception should be made to the rules for marketing to those with a preexisting business relationship.

15. The FTC states that the national registry will operate for only two years and then the FTC will do a cost/benefit analysis. We believe the time for a cost/benefit analysis should occur before such a system is attempted. Small businesses should not bear the burden of experimentation, especially when the Commission recognizes on page 69: "states report that consumers are responding in such overwhelming numbers to the State 'do-not-call' statutes that some States's telephone systems have crashed."¹

16. A national registry will cost tens of millions of dollars to implement and to staff at a time when national priorities are focused elsewhere, with little benefit. Numerous states already have their own state lists and those are easily accessible to small businesses, even though many of the barriers to compliance remain even at that level. Also, consumer self-help is increasingly available in the ability to screen calls through caller ID and answering machines. Industries such as the Direct Marketing Association maintain voluntary DNC lists which are regularly promoted--even in newspapers through business pages, consumer columns and Dear Abby. The case for sweeping national action here has yet to be made.

17. If the Commission is compelled to continue with this experiment, we believe the NAA's suggestion of a newspaper exemption is worthy of merit. We further believe a small business exemption should be implemented throughout the experimentation phase and should be granted for non-telemarketing businesses that have fewer than 50

¹ To operate a do-not-call national list with millions of names is virtually an insurmountable task. As the direct marketing associations point out, 20% of individuals move each year. We know that the national list would never be completely accurate.

employees, as the Commission recognizes that the database maintenance exercises will customarily be carried out in small newspapers on 1) an in-house basis and 2) with personnel who have limited database resources.

18. While it is reasonable to assume that an organization larger than 50 persons would at least have the expertise on staff to attempt compliance and could sustain the costs of adapting as the Commission learns from the experiment and shapes its regulatory approach, many small organizations will not be able to shoulder this burden. If a compelling case for sweeping smaller businesses into the net can be made at the conclusion of two years, the Commission should undertake fact-finding about the computer savvy of small businesses before strangling them with penalties for noncompliance.

19. With regards to the exemptions proposed in the rulemaking, we are pleased to see that business-to-business communications are exempt, due to numerous business transactions that are common among newspapers and potential customers. Where fraudulent activity has occurred, the FTC points out that it has been successful in pursuing law enforcement actions under the FTC Act and there does not seem to be a need for new regulations.

20. In summary, community newspapers do use telemarketing in limited ways to obtain newspapers subscribers, primarily at the local level. If they reach states with do-not-call restrictions, they are presently occupied with attempting to comply with those and should be given a chance to do so. If they are not, they deserve at least some rudimentary fact-finding by the Commission on the burdens this rule would create.

21. Telemarketing calls are a close analogue to so-called junk mail. When it is a product the consumer wants, he or she does not consider it junk. Likely the same reflex would govern telemarketing. While some citizens may find an appeal in a sweeping federal DNC list, they may not have reflected upon the limitations of access to such popular products as the local newspaper. Judging from the low level of complaint activity within our industry's history, NNA believes the FTC's intervention to protect consumers in this instance is unnecessary.

Respectfully submitted,

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