

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

Telemarketing Rulemaking - User Fee Comment
FTC File No. R411001

**COMMENTS OF THE MAGAZINE PUBLISHERS OF AMERICA
ON THE COMMISSION'S NOTICE OF PROPOSED RULEMAKING ON
TELEMARKETING SALES RULE USER FEES**

The Magazine Publisher's Association (the "MPA") is the national trade association for consumer magazine publishers. Our membership includes approximately 240 domestic magazine publishing companies that publish more than 1,500 individual magazine titles, along with more than 100 international magazine publishers and more than 120 associate members who act as suppliers to the magazine industry. MPA members' magazines include nationally distributed publications such as *Time*, *Reader's Digest*, and *Good Housekeeping* as well as smaller circulation publications.

The MPA submits this comment in response to the Commission's Notice of Proposed Comment on Telemarketing Sales Rule User Fees (the "User Fee NPRM").¹ As explained in detail in our initial comments in response to the Commission's Notice of Proposed Rulemaking to Amend the Telemarketing Sales Rule (the "Rule NPRM"),² the MPA believes that the Commission's proposed national do-not-call registry (the "DNC List") is both legally and structurally flawed. If, despite these flaws, a national DNC List is to be implemented, we support the comments filed by the Direct Marketing Association ("DMA") in response to the User Fee NPRM.

¹ 67 Fed. Reg. 37,362 (May 29, 2002).

As the DMA notes, the Commission’s proposal to collect fees from telemarketers for the administration of the proposed national DNC List is not authorized under the Independent Offices Appropriation Act (the “IOAA”). 31 U.S.C. § 9701. The IOAA allows federal agencies to establish regulations to collect charges for providing users with some “service” or “thing of value.” The Federal Communications Commission (the “FCC”), for example, imposes fees on cable operators who seek certificates of compliance from the FCC. As cable operators cannot commence operations without receiving a certificate of compliance from the FCC, the certificate constitutes a valuable license. In the instant situation, however, neither the User Fee NPRM nor the Rule NPRM describes any specific service or “thing of value” that will be provided to telemarketers through the establishment of the Commission’s national DNC List. Consequently, we believe that the current user fee proposal does not meet the standard set out in the IOAA.

Even assuming that authority to collect user fees from telemarketers exists, however, the Commission’s user fee proposal is significantly flawed. For example, the user fee proposal does not allocate the costs of administration according to the percentage of benefit the DNC List would confer upon consumers, on the one hand, and telemarketers, on the other hand. As such, MPA believes that the Commission must fund any proposed national DNC list entirely from federal appropriations or from some appropriate combination of user fees and consumer fees. Indeed, as stated in our initial and supplementary comments to the Rule NPRM, we believe that the imposition of a nominal consumer fee would also help improve the accuracy and integrity of the Commission’s national DNC List.

In addition, we note that the user fee proposal does not explain who would bear the burden of additional costs in the very likely event that the Commission’s cost estimates for

² 67 F.R. 4492 (January 30, 2002).

administration of the DNC List prove inadequate. For example, the Commission's current DNC List proposal is based on Automatic Number Identification ("ANI") verification technology, but ANI technology is not currently available in all parts of the country. Consequently, we believe the cost of implementing the Commission's national DNC List is likely to be significantly higher than the Commission currently projects. Moreover, if the Commission chooses to impose a DNC List renewal requirement that is longer than the annual renewal requirement suggested in our comments to the Rule NPRM, then the Commission will likely face further additional expenses in ensuring that the numbers on its DNC List are accurate. This challenge will be quite significant, especially since no national "disconnected numbers" database either exists or is likely to be created to allow the Commission to remove outdated numbers from its national DNC List. The collection of a nominal fee from consumers would help alleviate the impact of the additional costs associated with these significant operational challenges.

If you have any questions or concerns regarding these comments, any other comments filed by the MPA in the Commission's Telemarketing Sales Rule review proceeding, or any other aspects of the MPA, please feel free to contact us.

Respectfully submitted,

Michael Pashby
Executive Vice President/General Manager
Magazine Publishers of America
909 Third Avenue, 22nd Floor
New York, NY 10022
(212) 872-3700

Rita D. Cohen
Senior Vice President
Legislative and Regulatory Policy
Magazine Publishers of America
1211 Connecticut Avenue, Suite 601
Washington, DC 20036
(202) 296-7277

Counsel:

Linda Goldstein, Esq.
Hall Dickler Kent Goldstein & Wood LLP
909 Third Avenue
New York, NY 10022-4731
(212) 339-5465