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Federal Trade Commission  
Office of the Secretary  
600 Pennsylvania Ave NW  
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RE: Tobacco Reports: Paperwork Comment, FTC File No. P054507

Dear Chairwoman Ramirez:

Legacy is pleased that the Federal Trade Commission (FTC) is looking so thoughtfully at potential changes to the Cigarette Report and the Smokeless Tobacco Report on advertising spending for those products. We are grateful for the opportunity to comment for a second time on the questions posed to the public by the FTC.

As an organization that produces advertisements and marketing ourselves, we, along with our partner marketing agencies, have expertise in the areas FTC asks about that many in tobacco control do not. We offer our opinions on those questions listed in the Federal Register here, based on our experiences.

First, FTC asked whether cigarette and smokeless companies should report expenditures on advertising and marketing data on a state-by-state basis. We understand that, in general, the major tobacco companies are national advertisers, and therefore cannot report many categories of marketing and advertising, such as magazine advertising, on a state-by-state basis. However, there are occasions where advertisers make more targeted, local advertising buys – in local magazines or papers. Those kinds of advertising would be important for the public to know about and spending on such advertising can be easily tracked by the industry. Further, as FTC stated in the Federal Register, price discounts account for “more than 70% of cigarette industry expenditures and more than 20% of smokeless tobacco industry expenditures in recent years.” This data is much more likely to be able to be reported on a state-by-state basis, since companies would know which stores were selling at which prices.

Similarly, point of sale advertising is also easily traced to the state level. While advertising and marketing tracking agencies such as Kantar and Nielsen can track spending to individual media markets, there are gaps in what data these tracking systems can provide. In particular, these systems are unreliable when it comes to advertisement placement tracking or discounting, making the FTC Cigarette and Smokeless Tobacco Reports the only reliable source of this data, particularly on a state-by-state basis. Further, in terms of the actual spend on advertising, systems such as Kantar and Nielsen are based on open averages and/or rate cards, and cannot track any



discounts advertisers have negotiated. Therefore, FTC's collection of this data in general, but also on a state-by-state basis, would provide significant utility and provide valuable insight into the marketing tactics of the industry.

To the extent possible, we also encourage the collection of data at a more granular level than the state (e.g., county-level, zip code, census tract) given an abundance of research on the impact of the local point-of-sale environment on tobacco use.<sup>1</sup> This information is not reliably available elsewhere, and would enhance the public's ability to determine where the tobacco industry is targeting its marketing and advertising efforts. This is particularly important to determine *who* the industry is targeting. Our own research has shown that price displays and promotions vary significantly by block group in Washington, D.C., with greater presence of such displays in block groups populated by lower-income, more price-sensitive customers.<sup>2</sup> We have also shown that exterior tobacco advertisements in Washington, D.C. are more prevalent near schools, parks, and public housing, which is of concern for youth tobacco use.<sup>3</sup> We fully understand that this greater level of detail will not be uniform across all data collection efforts, but again, encourage the FTC to gather and publish these data where possible as a supplement to the standard measures.

Second, FTC asked whether electronic mail messages should be reported in the "other Internet" category or should be reported as direct mail expenditures. We believe that e-mail messages should be a completely separate category and should not be counted as "other Internet" or as direct mail. E-mail messaging systems have a different delivery mechanism than direct mail, and a different cost structure. Our experts likened it to radio advertising versus television advertising. These are somewhat similar in terms of their messages, but one would not lump them in the same category because of the significant differences in delivery and cost structure. Likewise, e-mail messages do not belong in the "other Internet" category. E-mail messages are not the same as digital display messages or mobile video, and therefore should not be combined in the same category. Our research using two full-service advertising tracking firms and structured web searches supports distinguishing e-mail from direct mail or "other Internet" advertising, given differences in the delivery and cost of these advertising efforts across various tobacco products, including smokeless tobacco,<sup>4</sup> menthol cigarettes,<sup>5</sup> cigars,<sup>6</sup> and little cigars and cigarillos.<sup>7</sup>

We also suggest that the FTC ask industry to report not only their spending, but also their impressions and opened e-mails being served. Due to the nature of e-mail, a message does not necessarily need to be opened in order for an impression to be delivered from it. This data would be helpful in determining not only the spend, but also the reach of the industry's e-mail marketing.

Third, Legacy agrees with FTC that responding cigarette and smokeless tobacco companies submit the sales-related data and the marketing expenditure data in two separate data files. This makes it easier for the agency to review and report the data.

Finally, we address FTC's final inquiry, regarding whether or not FTC should consider ending the requirement to report spending on transit advertising. Legacy believes that FTC should continue to collect transit advertising. This is due mostly to the evolution of the "out of home" marketing category, of which transit advertising is a part. In the past, the out of home category included billboards, print bus stop advertising, advertising on busses, subways, taxis, etc. However, because the out of home category is becoming digitized, it is a rapidly changing environment and it would be useful to determine whether tobacco companies are moving into this space where allowable, and if so, how much are they spending.

While the subject of this comment is focused on cigarettes and smokeless tobacco products, there is anecdotal evidence that other tobacco products are being marketed through the out of home channel. Should FTC begin collecting sales and marketing data on e-cigarettes and cigars, as Legacy and others have previously advocated, the out of home category, including transit advertising, will be increasingly important.

Again, Legacy appreciates the opportunity to comment on this high-utility information collection, and is eager to provide additional information if FTC has further questions. We encourage FTC to require tobacco



companies to provide this critical information in order to assist in developing appropriate, life-saving policies with regard to tobacco marketing and advertising. Please contact Stacey Gagosian, Director of Government Affairs, at [sgagosian@legacyforhealth.org](mailto:sgagosian@legacyforhealth.org) if you have further questions.

Sincerely,

M. David Dobbins  
Chief Operating Officer

### References

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