Before the
Federal Trade Commission
Washington, D.C.

In the Matter of	)	
	)	Project No. R411001
Telemarketing Sales Rule Regulatory Review	)	
16 CFR Part 310	)	
	)	

COMMENTS OF THE NEWSPAPER ASSOCIATION OF AMERICA

The Newspaper Association of America ("NAA") appreciates the Commission's work in recent years to ensure that consumers continue to receive local news notwithstanding the significant economic challenges that news organizations have faced over the past decade.[1] To advance this objective, the Commission should revise its Telemarketing Sales Rule ("TSR") to permit local news providers to inform long-time subscribers of new digital news offerings.

Today's multi-media news products bear little resemblance to the local news that consumers received 20 years ago when Congress enacted the Telemarketing and Consumer Fraud and Abuse Prevention Act on which the TSR is based. Indeed, local news has changed significantly even since 2010, when the Commission last revised its TSR.[2] Newspapers have unveiled new business models in support of newspaper journalism, including paid digital subscriptions. Unfortunately, the Commission's telemarketing rules prevent newspapers from marketing these new offerings to many of their former subscribers. Accordingly, the NAA respectfully requests that the Commission: (1) amend the TSR's "established business relationship" exception to provide sellers with greater flexibility to call former subscribers; and

[1] *See, e.g.*, Federal Trade Commission conference, *How Will Journalism Survive the Internet Age*, Dec. 1-2, 2009, *available at* http://www.ftc.gov/news-events/events-calendar/2009/12/how-will-journalism-survive-internet-age.

[2] 16 C.F.R. § 310.

(2) ensure that disconnected or reassigned telephone numbers are removed from the National Do Not Call Registry.

I. The Commission Should Amend the Definition of an "Established Business Relationship" to Provide Sellers with Greater -- and Appropriate -- Flexibility to Call Former Subscribers.

Newspapers are constantly developing new products that deliver local news and information to communities. Unfortunately, the TSR prevents newspapers from informing many of their former subscribers about these new offerings. The Commission should eliminate this barrier by providing sellers with more flexibility to contact former subscribers under the "established business relationship" exception.

The economic challenges facing local news organizations are well-documented, and they create profound concerns for our nation and our democracy, which depends upon an informed electorate. In-depth, investigative reporting requires a substantial commitment of resources. Unfortunately, the recent recession and accelerated changes in technology have upended the economic system that has funded journalism for decades. For example, in 2007, newspaper print and digital advertising revenues totaled $45.3 billion in 2007. In six short years, these advertising revenues declined by 54 percent to $17.3 billion. And, as a result of this disruption in the business model, more than 200 newspapers closed or eliminated a newsprint edition, with the vast majority of these changes in small and mid-sized markets.[3]

In addition to this fundamental shift in the advertising model that once provided the primary revenue stream for newspapers, Americans have changed their news consumption habits. With the availability of news and information across digital and mobile platforms, many

[3] Steven Waldman *et al.*, *The Information Needs of Communities: The changing media landscape in a broadband age* 41 (July 2011).

former subscribers have canceled their print newspaper subscriptions, choosing instead to attempt to access similar information online. According to RBC Capital Markets, consumers receive approximately 40 percent of their news from online sources, up from 20 percent in 2003.[4] According to a study released this year, nearly seven in 10 Americans receive news from laptops or computers, compared to approximately six in 10 who receive news from *any* print format, either newspapers or magazines.[5] And nearly as many Americans receive their news via mobile phone as they do from print media.[6]

The good news is that the audience for newspaper media has grown substantially through these digital distribution channels. According to research conducted by comScore for the NAA, 80 percent of adults who were online in August 2014 accessed newspaper digital content.[7] Newspapers' digital audience increased by 18 percent over the previous 12 months, to 164 million unique visitors in August 2014.[8]

Unfortunately, the revenue generated by digital advertising has replaced only one out of every five dollars lost in print advertising over the last six years. The change in consumer consumption habits, coupled with its related effect on advertising revenues, has forced newspapers to shift their focus largely to a digital subscription model. By 2013, more than 500 of approximately 1,400 daily newspapers adopted a digital subscription model for their

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[4] Testimony of David Bank, RBC Capital Markets, House Subcommittee on Communications and Technology Hearing on "Media Ownership in the 21st Century" (June 11, 2014).

[5] Associated Press-NORC-American Press Institute, *The Personal News Cycle* (March 2014).

[6] *Id.*

[7] Newspaper Association of America, *Newspaper Digital Audience Hits New Peak*, *available at* http://www.naa.org/Topics-and-Tools/Digital-Media/Mobile/2014/Newspaper-Audience-New-Peak.aspx.

[8] *Id.*

websites.[9] Consumers recognize the need for resources to support high-quality, professionally edited journalism, and are beginning to embrace this new approach. For instance, in 2013, digital-only circulation revenue grew by 47 percent.[10]

Digital subscriptions help newspapers replace advertising revenues that they have lost in the past decade, and they fund on-the-ground local journalism. Moreover, newspapers have found that many former subscribers are eager to purchase "bundled" subscriptions that provide both the print edition and access to the newspaper's website and/or mobile products. In short, newspapers are developing new revenue streams to continue to fulfill their mission of being a public watchdog. And consumers clearly are embracing these new products. But many consumers are unaware of these new digital offerings because newspapers cannot call to tell them about them.

The Commission could help fix that problem by updating the TSR to permit newspapers to inform their former print subscribers about their new online offerings. For many years, the FTC has been concerned about the economic changes that have affected journalism. As former Chairman Leibowitz stated at a 2009 FTC conference on journalism, "we should be willing to take action, if necessary, to preserve the news that is vital to democracy."[11] Modernizing the TSR is one such action that would help to preserve local news.

The TSR currently permits a seller to call a consumer whose telephone number appears on the National Do Not Call Registry on the basis of, among other things, an

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[9] *Id.*

[10] Rick Edmonds, Poynter, *Newspaper Industry Narrowed Revenue Loss in 2013 as Paywall Plans Increased*, (April 18, 2014) *available at* http://www.poynter.org/latest-news/top-stories/247555/newspaper-industry-narrowed-revenue-loss-in-2013-as-paywall-plans-increased/.

[11] Brent Kendall and Thomas Catan, *FTC to Examine Possible Support of News Organizations*, THE WALL STREET JOURNAL (Dec. 2, 2009).

"established business relationship" between the seller and the consumer.[12] The TSR defines "established business relationship" as a relationship between a seller and a consumer based on (1) "the consumer's purchase, rental, or lease of the seller's goods or services or a financial transaction between the consumer and seller, within eighteen months immediately preceding the date of a telemarketing call;" or (2) "the consumer's inquiry or application regarding a product or service offered by the seller, within the three months immediately preceding the date of a telemarketing call."[13]

This definition of "existing business relationship" imposes the same limits for all types of consumer-seller relationships, regardless of whether the consumers are, or were, routine and persistent subscribers to a seller's products or services over a period of time. For instance, if an individual subscribed to a newspaper from 1990 through 2011, the newspaper would not have an "existing business relationship" with that individual in 2014. But if a consumer bought one item of clothing from a catalogue retailer in 2014, the catalogue retailer would be free to call the consumer for the next 18 months (assuming the consumer did not ask to be placed on the retailer's entity-specific do not call list). Such a disparity makes little sense, as a two-decade subscriber presumably would be much more amenable to receiving a call than a one-time purchaser. The FTC should distinguish between categories of consumers in this context, as the routine and persistent interactions between sellers and their subscribers -- even their *former* subscribers -- make it far more likely that those subscribers would expect (and even welcome the opportunity) to receive a call from the seller of that subscription product or service.

[12] 16 CFR § 310.4.

[13] 16 CFR § 310.2(o).

To effectuate this distinction, the FTC should expand the TSR's definition of "established business relationship" to include a third category: a relationship between a seller and a consumer based on "a subscription to an existing or former product or service for a period of one year or longer, provided that the consumer has not informed the seller that the consumer no longer wishes to receive telemarketing calls from the seller." The Commission should define "subscription" as "an arrangement for receiving regular delivery of a product or access to a service in exchange for regularly scheduled payments over a period of time."

This change would ensure that sellers that have -- or once had -- meaningful and sustained relationships with certain customers can continue to contact those customers when those customers do not object, while imposing more stringent limits on their calls to occasional purchasers. Importantly, this change would continue to vest in consumers the ultimate control over whether such calls can be transmitted to them. If a former long-time subscriber no longer wishes to be contacted, the subscriber need only tell the seller once. Because most consumers only have a handful of subscription relationships with sellers, this change would not burden them.[14]

In short, this modest proposed change would enable newspapers and other companies to contact former long-time subscribers and inform them of new products that very well might interest them. Updating this regulation would enable newspapers to continue to fulfill their mission of providing original news and information to small and large communities nationwide.

[14] To the extent similar conforming changes would need to be made to the FCC's telemarketing regulations under the Telephone Consumer Protection Act, the NAA would pursue them. The FCC has amended its regulations in the past to align with the TSR.

II. The FTC Should Ensure that Disconnected or Reassigned Telephone Numbers are Removed from the National Do Not Call Registry

The Commission should ensure that the National Do Not Call Registry is up-to-date and does not include phone numbers that have been disconnected and reassigned since they initially were enrolled on the Registry. As an increasing number of consumers move from landlines to mobile telephones,[15] it is particularly important to ensure that the Registry remains current and is not outdated.

Households began placing their numbers on the Registry more than a decade ago. Under the Do Not Call Improvement Act of 2007,[16] telephone numbers that are placed on the Registry remain on the list permanently, unless those numbers have been disconnected and reassigned. The statute requires the Commission to "periodically check telephone numbers" on the Registry against "national or other appropriate databases" and remove those numbers that have been disconnected or reassigned.[17] Such periodic scrubbing ensures that households with newly assigned telephone numbers are not automatically placed on the Registry merely because the previous subscriber to that number had registered.

In an October 2008 report to Congress, the Commission described its purge and scrubbing process, explaining that once a month, "the Registry is compared against the database of numbers maintained by the subcontractor to remove those telephone numbers that have been

[15] *See* Drew DeSilver, Pew Research Center, *For Most Wireless-Only Households, Look South and West* (Dec. 23, 2013), *available at* http://www.pewresearch.org/fact-tank/2013/12/23/for-most-wireless-only-households-look-south-and-west/ ("two in every five American homes (39.4%) had *only* wireless phones as of the first half of 2013.").

[16] 15 U.S.C. § 6155.

[17] *Id.*

coded as disconnected and subsequently reassigned."[18] But the NAA is unaware of any more recent descriptions of how the Commission meets the 2007 statute's mandate of "periodically" removing numbers that have been disconnected and reassigned.

To fulfill its statutory obligation, the Commission should adopt a regulation that requires it to purge the Registry at least once a month, and issue public reports that describe how the Commission ensures that the disconnected and reassigned numbers continue to be removed. This change would ensure that newspapers and other businesses have an opportunity to contact individuals who have not chosen to be on the National Do Not Call registry.

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These two changes to the TSR would provide newspapers with an effective tool for informing consumers about new online news products. The changes would not materially increase the number of unwanted calls, as they would only affect customers who had a long-term subscription relationship with the seller and would permit them to opt-out of such calls.

Respectfully submitted,

/s/_________________________________

Yaron Dori
Jeff Kosseff

COVINGTON & BURLING LLP
1201 Pennsylvania Avenue, N.W.
Washington, D.C. 20004-2401
202-662-6000

Counsel for the Newspaper Association of America

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[18] Federal Trade Commission, *Report to Congress Regarding the Accuracy of the Do Not Call Registry* (October 2008).