**Comments to the Federal Trade Commission**
**From the National Consumers League**
**Telemarketing Rulemaking – Revised Fee NPRM Comment**
**FTC File No. R411001**
**April 24, 2003**

## Introduction

The National Consumers League (NCL) is a nonprofit organization founded in 1899 to identify, represent, and advance the economic and social interests of consumers and workers. In 1992, NCL created the first nationwide toll-free hotline, the National Fraud Information Center, to assist consumers with questions and complaints concerning fraudulent or deceptive telemarketing solicitations.

NCL supports the decision by the Federal Trade Commission (FTC) to establish a national do-not-call registry. To ensure its success, the registry must function on a sound financial foundation. NCL believes that the FTC has charted a reasonable and balanced approach to the issues of access and fees in its revised notice of proposed rulemaking.

## Entities That Are Allowed Access

NCL agrees with the FTC that it would be useful to broaden access to the registry under the circumstances described in the revised proposal. Entities that are exempt from FTC jurisdiction should not be prevented from voluntarily accessing the registry to avoid calling consumers who do not wish to receive telemarketing solicitations; indeed, they should be encouraged to do so. NCL wonders whether using the phrase "telephone calls for commercial purposes" in proposed Section 310.8 (e) would prevent charitable organizations from being able to access the registry if they wished to do so and suggests substituting the phrase "telemarketing solicitations."

List "scrubbers" and others that provide services to the telemarketing industry should also be able to access the registry, as long as they are acting on behalf of sellers that have paid the requisite fees. In addition to requiring certification of intent, the FTC should use tactics commonly employed in the telemarketing industry, such as "seeding" the registry with undercover phone numbers, to ensure that the registry is only used for its intended purpose.

## Entities That Are Required To Pay the Fee

Based on the information that the FTC has received, NCL agrees that the most straightforward and sensible solution to the question of which entities should pay to access the registry is to charge sellers on an annual subscription basis. This would be simpler than charging third-parties for each seller for which they provide services during the course of a year and make it easier for law enforcement authorities to monitor compliance with the fee requirements. It would also give sellers more flexibility to design their telemarketing campaigns and more certainty about the annual cost of compliance with the do-not-call provisions. The FTC's proposal to hold sellers and any entities acting on their behalf directly liable for compliance with the fee requirements is absolutely crucial to prevent abuses in this regard.

**Corporate Divisions, Subsidiaries, And Affiliates**

NCL strongly supports the FTC's position that distinct corporate divisions, subsidiaries, and affiliates must be considered as separate entities for purposes of subscribing to the registry. Allowing them to be considered as one seller, even though they would likely be conducting telemarketing campaigns for quite different products or services, would create an inequitable situation for smaller companies and threaten the financial viability of the registry. It would also create a confusing situation for consumers and law enforcement agencies, since corporate structures and affiliations are constantly changing. As the FTC points out, there is nothing in the proposed rules that would prevent separate entities that have paid for access to the registry from centralizing their scrubbing services.

**Amount Of Information for Which an Entity Would Be Charged**

NCL agrees that the simplest way to calculate the fee for registry access is by the number of area codes requested. It would be much more complicated to base the fee on the number of calls made, the number of telemarketing campaigns conducted, or some other criteria. The FTC's proposal is also more equitable to small sellers that may operate on a limited geographical basis.

**Small Business Access**

NCL believes that it is reasonable to provide up to five area codes to a seller at no charge within the subscription year. Another alternative would be to assess a modest minimum fee for up to five area codes (for example, $50 or $100). The ultimate goal of the fee structure should be to ensure solid funding for the registry while avoiding inequitable or overly burdensome fees that could discourage compliance.

**Conclusion**

NCL applauds the FTC for the careful consideration it has given to consumer and business concerns in developing the national do-not-call registry and eagerly looks forward to its implementation.

Submitted by:

Susan Grant
Vice President for Public Policy
National Consumers League
1701 K Street NW, Suite 1200
Washington, DC 20006
(202) 835-3323