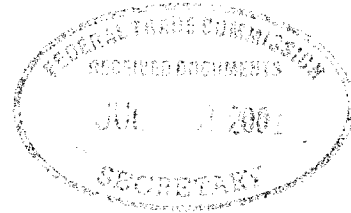




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June 28, 2002

Office of the Secretary
Room 159
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580

VIA UPS Overnight Delivery

Re: Telemarketing Rulemaking – User Fee Comment. FTC File No. R411001

MBNA America Bank, N.A. (“MBNA”) is a national banking association specializing in the marketing of affinity credit cards. Through our agreements with more than 5,000 organizations, MBNA issues credit cards endorsed by colleges and universities, professional sports teams, cause-related organizations, professional trade associations and similar groups. We are the world’s largest independent issuer of MasterCard and Visa credit cards. MBNA’s primary marketing channels include direct mail, telemarketing, direct promotions, and the Internet.

MBNA’s telemarketing operations are conducted through MBNA Marketing Systems, Inc., a wholly owned subsidiary (“MSI”). MSI has offices in eleven states (California, Delaware, Florida, Georgia, Maine, Maryland, New Hampshire, New Jersey, Ohio, Pennsylvania, and Texas). Worldwide, MBNA employs 28,000 people with 7,000 of these jobs directly associated with the operations of MSI. MBNA also engages third party service providers under contract (“Service Providers”) to supplement MSI’s efforts.

All MBNA business units using Service Providers regularly monitor the quantity and quality of telemarketing services provided. These business units and their Service Providers communicate directly with MBNA’s Central Telesales Division, which maintains a current telemarketing suppression list complying with the Telephone Consumer Protection Act (“TCPA”), all enacted and effective State “Do Not Call” (“DNC”) laws, and the Direct Marketing Association’s (“DMA”) Telephone Preference Service (“TPS”). MBNA’s Central Telesales, Law and Compliance Divisions, coordinated in part through a bank-wide Telephone Solicitation Working Group, monitor all Federal and State law, legislation and regulation concerning telemarketing and assure MBNA’s compliance. Our combined telephone suppression list contains more than 20 million residential phone numbers. We are confident that the quality of our telemarketing

calls, the magnitude of our sales ratios and the success of our compliance efforts are second to none.

MBNA appreciates this opportunity to comment on the proposed User Fee associated with the proposed Telemarketing Sales Rule (the "Proposed TSR"). We would, however, like to reiterate our position here as stated in our 4/11/02 Comment Letter on the proposed TSR that we do not believe there is the need or the authority for the FTC to create a National "Do Not Call" registry.

The following is in reference to MBNA's position on the proposed Telemarketing Sales Rule User Fees.

The NPR estimate of 3,000 "telemarketers" or "sellers" who would be required to pay the proposed user fee.

MBNA believes this number is understated. The proposed Telesales Rule, as currently written, does not allow for telemarketers to call consumers having an existing business relationship. Many of the significant existing State "do not call" laws allow for this practice. The absence of this exception will increase the number of telemarketers who will now be required to subscribe and pay a fee. A second reason derives from the current definition of "Outbound Telephone Call" within the proposed Telesales Rule. Adherence to this requirement will result in additional companies, who may not have active outbound telemarketing programs, being required to subscribe because of cross-selling programs they employ when customers call them.

The Commissions proposed access to the national registry on an area code basis.

MBNA believes a more cost-efficient approach is to provide access to the entire national registry. Providing access based on specific area codes will significantly increase the complexity of the proposed system design both at its inception and on an ongoing basis. Providing access to the entire national registry is a more practical and easier process to manage and maintain. The cost to implement an access program based on specific area codes would require significant dedicated resources to build, maintain and manage this process. For example, this type of access system would need to take into account what happens when a new area code is created.

The FTC's Proposed Rule to charge telemarketers a user fee in exchange for access to the DNC registry

In the absence of an express statutory authority, MBNA believes the FTC's ability to impose user fees is limited by the Independent Offices Appropriations Act (IOAA) and case law characterizing excess fees as taxes. The FTC may not impose a fee upon a telemarketer unless a special benefit exists—akin to a benefit accrued when receiving a patent or a license to carry-on a specific activity. The primary benefit of the Proposed Rule flows to consumers who are protected from unwanted calls. Telemarketers access

to the DNC registry is necessary to ensure compliance with the FTC's Telemarketing Sales Rule. There are some situations, e.g. where telemarketer's may wish to conduct a welcome calling program for their own existing customers where they would be forced to access the DNC registry. Under this example there is no direct benefit to the telemarketer yet the FTC would impose a fee on the telemarketer for access to the DNC registry which would only be necessary to comply with the proposed rule.

User Fee vs Flat Fee.

MBNA's position on the cost of the list to telemarketers and how this cost should be based can also be found in Section 4 (d) of our 4/11/02 Telemarketing Comment letter. MBNA recommends that costs for telemarketers obtaining the list be based on flat fees. The proposed TSR would also be creating a "National" DNC list not a "regional" one so a flat fee of \$1,000 as suggested in the Notice would be more appropriate than a fee based on the number of area codes requested. If the Commission's basis for the registry is to reduce fraud and abuse, it will likely happen just as much, if not more, with the smaller regional telemarketers than the national ones so the burden of cost should be equal. Furthermore, in Section 4 (c) of our 4/11/02 letter we state, "not unlike the payment made by consumers for unlisted telephone numbers, MBNA believes it is entirely appropriate to charge consumers for such a privilege because it alleviates the cost burden to taxpayers". MBNA also believes that if a DNC registry is implemented, the Commission will be not only providing a "thing of value" to telemarketers as suggested in the Notice of the Telemarketing Sales Rules User Fees, but a "thing of value" to consumers. Anyone deriving a benefit from this registry should be expected to pay some sort of fee if one is assessed and this fee should not fall completely on the backs of legitimate telemarketers like MBNA. Our 4/11/02 Comment Letter also stated that "based on our survey of state DNC laws we recommend a charge of \$5.00" to consumers to be placed on the registry. The proposed \$5.00 fee assumes that the consumer would remain on the list for three years. The Commission would be well advised to study the experiences of states such as New York, which did not assess a fee for consumers before making its final ruling.

Should only Telemarketers be permitted to access to the national registry?

MBNA supports the need to expand access to the national registry to include "list brokers", affinity groups, as well as non-profit and political organizations. Any group that desires to telemarket its products or services to the general public should be subject to the requirements of Telemarketing Sales Rule including access to the national registry.

Is it appropriate to require the telemarketer that gains access to the national registry on behalf of other sellers or telemarketers to pay the required user fee for those other entities?

Telemarketers that call on behalf of multiple clients perform this service as their core business. As such, they should pay only one user fee and not a fee for every client on whose behalf they perform this service. The number of clients any telemarketer has should not play a part in the size of the fee they pay. Telemarketers should pay a flat fee,

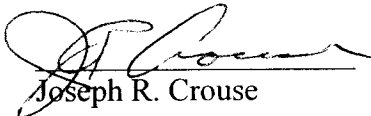
have access to the national registry and apply the suppressions for all telemarketing campaigns they are asked to conduct.

MBNA agrees with the FTC proposals that would 1) enable telemarketers to access the national database at any time, through a secure Internet website, 2) require telemarketers to pay the DNC list fees prior to gaining access to the registry, 3) charge these fees on an annual rather than a monthly basis and 4) support the required paperwork involved in securing the list. Also, while we can agree with the position that MBNA service providers should be expected to pay for the DNC list in addition to MBNA, we also believe that, if we as MBNA Corporation, pay for the list, all MBNA affiliates should have access to the list without an additional charge.

Finally, MBNA disagrees with the position taken in the Notice by the FTC that there would be minimal additional compliance burdens imposed by duplicative lists. As stated in Section 4 (b) of our 4/11/02 Telemarketing Rulemaking Comment Letter, if the proposed TSR keeps in place the existing "company-by-company" DNC list, adds the proposed "centralized" DNC list, and preempts neither existing State DNC laws nor voluntary obligations under the DMA's TPS, then effectively national telemarketers will be forced to comply with some 55 obligations simultaneously. These obligations would pose a "compliance nightmare" for most organizations, particularly for legitimate national telemarketers trying to adhere to these laws and regulations while strengthening the American economy.

MBNA appreciates the opportunity to provide these comments to the FTC on the Proposed TSR User Fee. If you have any questions or comments, please contact the undersigned at 302-432-0716.

Sincerely,


Joseph R. Crouse