



June 28, 2002

Via Email

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

*Re: Telemarketing Sales Rule User Fees Notice of Proposed Rulemaking
FTC File No. R411001*

To Whom It May Concern:

The Small Business Survival Committee (“SBSC”) submits these comments to the Federal Trade Commission (“FTC”) in response to the *Telemarketing Sales Rule User Fees, Notice of Proposed Rulemaking*, 67 Fed. Reg. 37362 (May 29, 2002) (“NPRM”). SBSC is concerned that by proposing to fund the FTC’s do-not-call list (“DNC”) through user fees, the FTC further sidesteps Congressional accountability. Additionally, SBSC believes that the FTC’s determination that telemarketers are the beneficiaries of the DNC proposal is ludicrous. To that end, the user fee is actually a tax on marketers for the benefit of others. This tax will of course be passed along to consumers – the very consumers who purchase from the marketers. Finally, the FTC completely underestimates the extent to which its proposals will impact small business.

SBSC is a nonprofit nonpartisan small business advocacy organization based in Washington, D.C. and has 70,000 members across the country.

I. Impact on Small Business

The FTC’s proposal will impact small business both in terms of cost (which will be borne by the consumer) and in decreased business opportunities.

A. Costs

Many small businesses will be impacted by the FTC’s proposed DNC list and accompanying user fees. Simply because the FTC has opted to exclude five area codes from the fees does not make the user fee proposal

small business friendly. As the FTC noted, a business is considered “small” if it has less than \$6 million in sales annually. *NPRM*, 67 Fed. Reg. at 37366. Simply because a business has less sales of less than \$6 million does not mean it uses less than five area codes. Many small businesses are located in geographic areas with many area codes. That is, a state relatively small in geographic size may have a tremendous number of area codes or a metropolitan area may have many area codes.¹ Similarly, some small businesses may actually be national in scope. Thus, the five free area codes are simply not sufficient to protect the interests of small business.

Small businesses are very sensitive to increases in cost. Therefore, they will be more likely to pass increased costs along to consumers. In addition to the cost of compliance with the proposed rules (costs that have been called to the FTC attention by numerous commentors in earlier comments), the user fee would be passed along as well. The many people who purchase goods and services from telemarketers will bear the cost of the do-not-call list. Those who place their names on the list do not have to pay. Simply put, consumers will bear a “convenience tax” so that other people will not receive telemarketing calls.

B. Decreased Business Opportunity

There are currently several different products on the market that intercept telemarketing calls. The FTC’s proposal will eliminate the market for these devices. Some small businesses that manufacture such devices could simply be eliminated. Furthermore, new business opportunities will be eliminated; as telephone systems change, new technology will be needed to intercept such calls and small business will probably step into the market. Thus, the FTC’s proposal will eliminate the remedies that the marketplace has already developed and hurt small business in the process.

C. Fear of Regulation

Small businesses are subject to tremendous regulatory burdens. Small businesses do not have the resources to hire lawyers as larger companies do. With proposed penalties of \$10,000, the FTC’s DNC

¹ For example, Massachusetts, with only 8,262 square miles (the sixth smallest state) has nine area codes.

proposal may simply drive small businesses out of telemarketing. Because telemarketing is such a cost-effective channel of advertising, *see, e.g.*, Comments of DMA and U.S. Chamber, small business may lose business and run the risk of failure.

II. Congressional Accountability

Earlier commentors demonstrated that the FTC does not have the statutory authority to create a national DNC list. *See, e.g.*, Comments of the Direct Marketing Association and U.S. Chamber of Commerce at 16. If Congress agrees that the FTC does not have the authority to create a DNC list, then it could simply provide the FTC with no appropriations for DNC implementation. To the extent that the FTC now proposes to fund such a list pursuant to 31 U.S.C. § 9701, it further sidesteps Congressional oversight. Thus, there is *no* political accountability for a massive increase in regulatory burdens on business.

III. True Beneficiaries are Consumers Who Do Not Want Calls

The FTC argues that the DNC will benefit marketers by providing them with a list of individuals who do not wish to be called. *NPRM*, 67 Fed. Reg. at 37363. The FTC did not propose the DNC list for the benefit of marketers. It proposed to create a DNC because it believes it will protect consumers. *Telemarketing Sales Rule Notice of Proposed Rulemaking*, 67 Fed. Reg. 4492, 4494 (Jan. 30, 2002) (“The proposed changes to the Rule are made pursuant to the rule review requirements of the Telemarketing Act, and pursuant to the rulemaking authority granted to the Commission by that Act *to protect consumers from deceptive and abusive practices, including practices that may be coercive or abusive of the consumer’s interest in protecting his or her privacy.*”) (emphasis added).

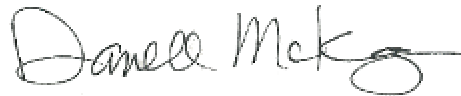
As indicated above, marketers will be forced to pass these costs along to consumers in the form of a “convenience tax.” In essence then, the end result will be that those who want to receive the calls will pay the FTC’s user fees. Thus, the true beneficiaries, *i.e.* those who do not want to receive the calls, will not pay anything. Those who receive no value from the DNC, *i.e.* those who want to receive calls from marketers and

who make purchases from them, will bear the cost. The end result is that the FTC is imposing a tax on those who wish to purchase and not a user fee on marketers.

Conclusion

For the reasons set forth above, SBSC believes that the FTC should not fund its proposed DNC list with a fee imposed on marketers.

Respectfully submitted,

A handwritten signature in black ink that reads "Darrell McKigney". The signature is written in a cursive style with a long horizontal stroke at the end.

Darrell McKigney
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