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June 28, 2002

By Electronic Mail

Federal Trade Commission
Office of the Secretary
Room 159
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580
Attn: FTC File No. R411001

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

Ladies and Gentlemen:

This comment letter is submitted on behalf of Visa U.S.A. in response to the Federal Trade Commission's ("FTC") request for public comment on its proposal to amend the Telemarketing Sales Rule to impose user fees on telemarketers, and their sellers or other clients, for their access to a national do-not-call ("DNC") registry ("Proposed Rule"). This letter supplements our comments submitted on April 10, 2002, and May 21, 2002.

As set forth in our comments submitted on April 10, 2002, Visa supports the idea of a centralized DNC registry, provided that modifications described in our earlier comments are adopted prior to the implementation of that system. However, the Proposed Rule could complicate the administration of such a list unnecessarily and may invite legal challenges that could delay implementation of a national DNC registry.

Visa recommends that the FTC simplify the contemplated user fee system. As we understand the Proposed Rule, an annual user fee would be charged to all telemarketers and their clients who access or obtain data from the DNC registry. Under the Proposed Rule, the annual fee would be \$12 per area code of data that the telemarketer uses, with a maximum fee of \$3,000. Once the fee is paid, a telemarketer may access the registry data for the selected area codes at any time for 12 months following the first day of the month in which the telemarketer paid the fee.

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Telemarketers who market on behalf of multiple clients, for example sellers, would have to pay a separate fee for each seller. Sellers who change telemarketers during the course of a year would be required to pay again to access the registry for each client or sellers contracting out telemarketing activities would not be able to check the registry themselves. As a result, a telemarketer representing multiple clients would be required to pay multiple times to access the very same information.

In addition, the supplementary information accompanying the Proposed Rule (“Supplementary Information”) explained that “distinct corporate divisions of a single corporation are considered separate sellers for the purpose of the Rule.” As a result, in many cases affiliates and subsidiaries of the same company may be considered separate sellers under the Proposed Rule and thereby required to pay a separate charge for a telemarketer’s access to the same information.

We believe that a simpler pricing structure that recognizes the need to maintain confidentiality of the DNC registry would be easier for both the FTC and for telemarketers to administer. For example, the FTC could license the registry to either sellers who would then employ a telemarketer to use the DNC registry, subject to confidentiality and use restrictions, or the FTC could license the registry to telemarketers who would use the list for their various sellers’ customers but the telemarketers would be prevented from disclosing the list to their customers. The choice would be made by the telemarketer or the customer, but in either case, the same fee structure would apply.

With respect to the proposed fee, the FTC also indicated in the Supplementary Information that in developing the Proposed Rule the FTC was guided by the Independent Offices Appropriations Act (“IOAA”) and the Office of Management and Budget (“OMB”) Circular No. A-25 Revised (“Circular”). The FTC, however, cites only the Telemarketing and Consumer Fraud and Abuse Prevention Act as authority for the charge. The FTC also notes that it believes that the “Commission will be providing a ‘thing of value’ to telemarketers; namely, a list of all United States consumers who have indicated a preference not to receive certain telemarketing calls.”

However, the IOAA, the Circular and related case law create a complex framework that determines the legality of user fees. That framework appears to require consideration of both the benefit to the consumer and the costs of providing that benefit in establishing specific user fees. In a number of cases, user fees have been challenged and held to be invalid under these standards. Visa

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urges the FTC to evaluate the final fee structure carefully in light of these requirements so that any final rule is not delayed unnecessarily by legal challenges.

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Once again, we appreciate the opportunity to comment on this important matter. If you have any questions concerning these comments, or if we may otherwise be of assistance in connection with this matter, please do not hesitate to contact me at (415) 932-2178.

Sincerely,

Russell W. Schrader
Senior Vice President and
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