

**BEFORE THE  
FEDERAL TRADE COMMISSION  
Washington, D.C. 20580**

<b>In the Matter of</b>	)	
	)	
<b>Telemarketing Rulemaking -</b>	)	<b>16 CFR Part 310</b>
<b>Revised Fee NPRM Comment</b>	)	<b>FTC File No. R411001</b>

**Reply Comments of Justin Scheid & Matt Kiverts**

Justin Scheid and Matt Kiverts hereby submit their reply comments to the Federal Trade Commission (Commission) in the above-captioned matter in response to the Commission's notice of January 30, 2002, 67 FR 4492 issued in connection therewith, further amended by the Commission in its Order of April 3, 2003, to assist the Commission in determining the manner in which fees on entities accessing the national do-not-call registry will be imposed.

We are greatly concerned with the effect that this rulemaking will have on the small seller or small business owner. This revised NPRM is proposing a yearly fee that each seller or telemarketer will be required to pay to permit access to the mandatory do not call registry. This fee is mandatory for all sellers or telemarketers that employ outbound calls to consumers in an effort to conduct their business. This proposed fee is strictly set and there appears to be little flexibility built into the NPRM to allow for and accommodate the smaller scale seller. Essentially, these mandatory fees are a drop in the bucket to large sellers that derive massive profits from telemarketers, however such a cost may prove to be prohibitive to the business efforts of the small scale seller as it will detrimentally affect the already narrow profit margins that most small scale sellers must navigate to stay afloat.

The majority of sellers that employ telemarketing as a major aspect of their businesses are small scale and, therefore, will be drastically affected in their businesses if such a rule as is proposed by this NPRM is adopted. Despite the relatively small cost as determined by the Commission, such a cost when imposed upon small scale sellers is quite significant to the small scale sellers business operations as they do not have the same ability as their larger scale competitors to diffuse such a cost over the large number of sales that the large scale entity will make, thereby making such an added cost almost negligible for a large scale seller when diffused over the large number of sales made through telemarketing over the year. Although it is very likely that the number of enterprises that will need access to only 5 or fewer area codes is large, thereby allowing many small scale sellers to completely avoid the registry access fees if the rule is adopted in accordance with the Commission's NPRM, the number of large scale enterprises by comparison is quite small but substantial in being able to accept much of the cost of the do-not-call registry without any significant adverse effect on their business. Therefore, we, on behalf of small scale sellers, propose that those entities that will access 250 or more area codes should bear the large portion of the cost of this registry. Additionally, it is our position that large scale enterprises have access to other forms of advertisement that are not typically available to small scale sellers due to cost restraints. The Commission, by placing such a tremendous fee on small

scale enterprises in their advertisement via telemarketing would result in an unacceptable constraint upon commerce as the vast majority of sellers that employ telemarketing would be adversely affected by being forced to bear the costs of the registry. Essentially, the costs would be better spread across society by imposition of the fees of the do-not-call list on those entities accessing 250 or more area codes as such large entities have the inherent ability to pass such costs on in small doses to the ultimate consumer of telemarketed goods. Small sellers simply do not have the financial leverage or the market presence to do the same as many of the goods telemarketed by small sellers are sold in a much more elastic economy. Therefore, the Commission is urged to grant free access to at least 5 area codes, if not up to 10 area codes, and beyond such "free codes" employ a graduated system that places the majority of fees on the largest scale sellers or telemarketers, as determined by a mixture of revenues, profit, subsidiaries, and overall cost structure.

We strongly encourage the adoption of the "free codes" exception from fees to allow small scale sellers to access the national do-not-call registry to update their call lists without being imposed fees for such access as it clearly allows smaller operations to operate without being encumbered by paying expensive, speaking in relative terms to the revenues of the operation, mandatory fees to access the do-not-call registry. Likewise, the Commission is encouraged by small sellers across the nation to adopt the maximum number of "free codes" to allow such sellers to remain competitive in a truly cut-throat and difficult economic market. It would be unfair to force such a large payment on a small scale seller in light of the fact that such minimal profit margins are attained on the vast majority of goods sold through telemarketing after accounting for all costs of production and costs of marketing the goods. Therefore, we propose to the Commission that such costs on the small scale seller would be prohibitive and would fully impede fair competition. Although there are other media available such as print, television, radio and the internet, these are not nearly as effective for small business as directly contacting the consumer through the magic of telemarketing, which is truly the last available lifeline of these small sellers to provide their products to the market.

\*\*\*We believe that a graduated level system would be most effective in allowing fair competition. In such a scheme, there would be low cost to access the do not call registry for less than even 50 area codes and beyond that the Commission would be able recoup the main costs from the large scale sellers and telemarketers.

We offer no opinion as to the number of firms that will access the national do not call registry but there will be a large number of small sellers that will be interested in employing telemarketing services. It is very difficult to gauge an accurate number as to who will or will not access the registry.

The average revenue per client is an average and is taking into account the large sellers and we are talking about the smaller scale seller. The average is likely skewed upwards because there are the large scale seller and we are talking about the smaller scale seller that likely only makes \$30,000 and such a large cost would be prohibitive for them and reemphasizes the need for a graduated system to payment. Many of the corporations that use telemarketers are large corporations and none of this will affect a large corp in any great way but the Commission is leaving the small scale seller by the wayside and if forgetting about the na dthese fees have a

tremendously adverse impact on their business and may force dissolution of the smaller businesses. We believe that instead of using the average as a benchmark the Commission should be looking at median because most businesses are larger scale and will tip the scales higher even though the majority of business may make very much less than that. By looking at the median it will allow such incredible variations to have a more accurate benchmark of the revenue per client by sellers. The minority of large scale corporations are throwing off an accurate assessment of the true impact of a fee on the market.

Again small scale sellers typically only employ one telemarketer in a year and typically such a relationship continues for a long period of time. Additionally,

Large and small scale enterprises can be distinguished by revenues.

Respectfully Submitted,

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