



April 30, 2003

Office of the Secretary  
Room 159  
Federal Trade Commission  
600 Pennsylvania Avenue, N.W.  
Washington, D.C. 20580

Re: Telemarketing Rulemaking – revised Fee NPRM comment. FTC File No. R411001.

Submitted via e-mail to [feerule@ftc.gov](mailto:feerule@ftc.gov).

Dear Mr. Secretary,

West Corporation (“West”) is submitting the comments below in response to the Federal Trade Commission’s (“FTC”) Revised Notice of Proposed Rulemaking (“Revised Fee NPRM”) to amend the FTC’s Telemarketing Sales Rule (“TSR”) to impose fees on entities accessing the national do-not-call registry. West is a provider of a variety of teleservices, including outbound telemarketing. The fee rule, as proposed, could have a substantial effect on West’s operations.

§ 310.8(b). It is a violation of this Rule for any telemarketer, on behalf of any seller, to initiate an outbound telephone call to any person whose telephone number is within a given area code unless that seller first has paid the annual fee, required by § 310.8(c), for access to the telephone numbers within that area code that are included in the national do-not-call registry.

Under the Revised Fee NPRM, telemarketers will be “directly liable for initiating an outbound telephone call on behalf of a seller without first ensuring that their seller-clients have paid for up-to-date access to the national do-not-call registry.”<sup>1</sup> The FTC has stated that without this direct liability, there is a concern that entities accessing the do-not-call registry will not pay their fair share of the fees.<sup>2</sup> The imposition of this liability will result in a significant burden on telemarketers.

It currently takes West, in its outbound operations, up to approximately six hours to process a lead list provided by a seller client. This process entails loading the telephone number leads by target market and subsequently checking the numbers against the West internal do-not-call list, state do-not-call lists, and the Direct Marketing Association (DMA) Telephone Preference List. Any numbers that appear on both the seller’s lead list and the various do-not-call lists are blocked from being called.

As proposed, the fee rule will require West to implement new procedures whereby lead lists are processed through area code tables to weed out any area codes for which the seller client has not paid for access to the do-not-call registry. It is estimated that this process will take approximately eight hours per 100,000 records to complete. The average lead list provided by clients consists of 200,000 callable records. Upon removing leads to the area codes for which the client has not paid, the normal do-not-call screening process, described above, can progress.

Adding to the burden is the fact that lead lists can vary daily, creating a daily need for the telemarketer to verify area codes purchased by the seller. The telemarketer could also have to access the do-not-call registry daily on behalf of a seller in case the seller had purchased any additional area codes since the time the initial lead list was provided.

To alleviate the burdens of telemarketers policing their clients and screening area codes, West recommends the FTC implement a licensing option whereby telemarketers can access the do-not-call registry on behalf of seller clients and perform scrubbing services for those clients. Under a licensing option, a telemarketer can pay a certain licensing fee for designated seller client(s). The telemarketer then assumes the liability for compliance with the do-not-call rule for the client(s). This promotes compliance with the do-not-call rules without reducing revenue to the FTC. Under the current Revised Fee NPRM, telemarketers will have access to the do-not-call registry through a seller's unique account number. Telemarketers could still use these account numbers in order to identify all sellers on whose behalf the telemarketers are making outbound calls.

#### [General Concerns/Comments](#)

Under § 310.4(b)(3)(iv) of the TSR, a seller or telemarketer will not be liable for violating § 310.4(b)(1)(ii) and (iii) if it can demonstrate that, as part of the seller's or telemarketer's routine business practice, the seller or telemarketer uses a process to prevent telemarketing to any telephone number on any list established pursuant to §§ 310.4(b)(3)(iii) or 310.4(b)(1)(iii)(B), employing a version of the "do-not-call" registry obtained from the Commission no more than three (3) months prior to the date any call is made, and maintains records documenting this process. The Revised Fee NPRM does not set forth an update schedule for the do-not-call registry.

Without a defined update schedule, the potential exists for numbers to be missed in the three-month window. It takes approximately twenty to twenty-four hours to update the West system with a do-not-call registry consisting of one million records because the upload happens on a real time basis. Given this, there is the potential for a number that is added one day after West downloads the do-not-call registry to be missed in the three-month window. This would require West to actually download the list more often than quarterly to avoid this potential problem.

Many of the states with do-not-call registries provide a schedule when numbers added to the registry are effective. For example, in Colorado, if a person signs up for the No-Call list between January 1 and March 31, telemarketers receive the list April 10 and must update their systems by April 30.<sup>3</sup> Setting a schedule such as this makes it clear to both consumers and

telemarketers when numbers placed on the registry are effective. Such a schedule also minimizes download times for telemarketers.

As more and more states enact do-not-call legislation, telemarketers and sellers would find it beneficial and much less burdensome to access one consolidated do-not-call registry. West encourages the FTC to continue its effort to merge the state lists with the federal registry. A consolidated list would generate significant cost and time savings.

### Specific Questions Posed by the FTC

The FTC set forth a series of specific questions in its Revised Fee NPRM. While West does not attempt to answer each question, it does make comment on the questions below.

*How many area codes of data will the average firm accessing the national do-not-call registry purchase? How many firms will require access to 250 or more area codes of data? How many will need access to 5 or fewer area codes?*

West estimates that the majority of the sellers for which it provides services will purchase more than 250 area codes. These client sellers typically market their products nationwide. West also estimates that very few of its client sellers will purchase 5 or fewer area codes.

*Is it appropriate to require each separate corporation division, subsidiary and affiliate that engage in outbound telemarketing to pay a separate fee to access the national registry? Why or why not? If a separate fee is not appropriate, what is a better way to differentiate between large and small enterprises?*

It is not appropriate to require each separate corporation division to pay a separate fee to access the national registry because each division is not a separate entity, but rather part of one corporate entity. To require each division to separately pay for access creates an undue burden on telemarketers to understand the corporate divisional structure of all of its clients to ensure that each division is appropriately accessing and paying for the registry. On the other hand, subsidiaries and affiliates are separate entities. It is more understandable that such entities would be required to pay a separate fee to access the national registry.

As stated, a separate fee is not appropriate for separate corporate divisions. The FTC asks for ideas on a better way to differentiate between large and small enterprises. Clarification is needed on why it is necessary to so differentiate. Whether a company is large or small, to require it to pay for separate access by division could punish that company for how it structures its operations. Both large and small companies could have very few or many divisions. The fact remains, however, the divisions are all part of one company. Requiring that company to potentially pay multiple times for the registry is unnecessary.

Above are several comments aimed at helping the FTC structure a fee rule that will permit consumers to register their numbers on the do-not-call registry without unreasonably burdening sellers or telemarketers. We hope these comments will be given serious consideration. Thank you.

Sincerely,

Janette K. Nelson  
Associate Counsel – Compliance  
West Corporation

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<sup>1</sup> 68 FR 16240.

<sup>2</sup> *Id.*

<sup>3</sup> <http://www.coloradonocall.com>.