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Federal Trade Commission
Office of the Secretary
Room 159-H (Annex D)
600 Pennsylvania Avenue, NW
Washington, D.C. 20580

Monthly Registry Access, Project No. R411001

Commissioners and Other Interested Parties,

MidFirst, a federally chartered savings association, is pleased for the opportunity to respond to the Notice of Proposed Rulemaking relating to the Telemarketing Sales Rule as published in the February 13, 2004, Federal Register page 7329. MidFirst recognizes the benefit of a federal do not call list, but raises certain items regarding implementation. MidFirst requests confirmation that a) the Commission will update the list at least as frequently as telemarketers must download the list and b) that any cycle a telemarketer chooses will comply with the requirement provided the telemarketer is downloading a list at least once every thirty days or once each calendar month (depending on the final rule).

MidFirst believes the Commission's intent in proposing a "thirty day" rule is to require a telemarketer to download a file on January 1, January 31, March 2 (assumes no leap year), April 1, and every thirty days thereafter. The optimum requirement, and the option MidFirst supports, would allow telemarketers the option of downloading the updated list either once every 30 days or once per calendar month; this flexibility will allow each telemarketer to develop procedures that best reflect its operational and resource limitations thereby promoting consistent application of the rules and reduced error at a lower cost.

In response to the concern outlined in the proposed rulemaking regarding downloading lists at 11:00 PM on the last day of the month and again at 1:00 AM on the first day of the subsequent month to subvert the "once a month" intent, the Commission could easily identify such situations via access logs to the download registry. Further, if questioned, a telemarketer could produce evidence of the date and time of downloads over a prior period.

For the majority of consumers having already registered on the federal list, this rule change offers no value. In a September 17, 2003, press release the FTC advised that 50.3 million individuals had registered as of September 16, 2003. A similar press release and statistical data published on February 13, 2004, by the FTC revealed that 55.8 million individuals had registered on the federal list as of December 31, 2003. Less than 10 percent of total December 31, 2003, registrants had registered for the federal list during the period of increased media attention surrounding the October 1, 2003, effective date. This suggests any additional increase in the number of registrants will be marginal.

The discussion regarding the most appropriate required downloading frequency therefore centers on relatively few consumers and at most a 30 day variance between the date their phone numbers are recognized as being on the federal list by all telemarketers. Further, it is inappropriate to adopt a rule based on the potential for telemarketers to subvert the Registry's intent while the Commission is applauding compliance with the rule (refer to February 13, 2004 Commission Press Release labeled "Compliance with Do Not Call Registry Exceptional?").

MidFirst argues the impact on the consumer between these two options is marginal, and either process would meet Congressional intent. MidFirst further opines that the consumer would benefit from this either-or approach since telemarketers would select the method most efficient for their existing processes.

Regardless of the Commission's final rule, MidFirst encourages the FTC to adopt an effective date of at least one-year from the date of the final rule to allow not only the business community adequate time to modify systems and procedures, but also to ensure the FTC can handle the increased frequency of website hits and downloads and other procedural requirements.