

Before the
FEDERAL TRADE COMMISSION
Washington, D.C. 20554

In the Matter of)
)
Monthly Registry Access,)
Project Number R411001)

Comment on the Proposed
Amendment of the Telemarketing Sales Rule
to Require Sellers And Telemarketers, in
Complying With the Do Not Call Provisions
of the Telephone Sales Rule, to Use a Version of the
National Do Not Call Registry Obtained From the
Commission No More Than Thirty (30) Days
Prior to the Date Any Call is Made

To: The Commission

The New York State Consumer Protection Board (“NYCPB”) hereby respectfully submits the following comment to the Federal Trade Commission’s (“FTC’s, or Commission’s”) Notice of Proposed Rulemaking; FTC File No. R411001 that will amend the Telephone Sales Rule’s (TSR) Safe Harbor provision, 16 CFR 310.4(b) (3) (iv) to require sellers and telemarketers, in complying with the Do Not Call provisions of the TSR, to use a version of the National Do Not Call Registry obtained from the Commission no more than thirty (30) days prior to the date any call is made.

The New York State Do Not Call law is codified in General Business Law § 399-z and its companion rules are codified at 21 New York Code of Rules and Regulations (NYCRR) Parts 4602-4604. Prior to the adoption of amended 21 NYCRR § 4602.5(f) in October 2003 to bring such section into parity with statutory changes made to accommodate the NYSCPB’s use of the National Do Not Call Registry, (National Registry), it stated as follows:

No telemarketer or seller shall make or cause to be made any unsolicited telemarketing sales call to any consumer more than thirty (30) days after the consumer's telephone number (s) and name appear on the then current registry. A telephone number shall be the primary designation on the registry for a telemarketer.

Having registered almost three million telephone numbers on the New York State Registry before the transfer to the National Registry, New York consumers experienced comprehensive Do Not Call protection and our enforcement efforts were enhanced by the clear direction on complaint validity promulgated in our rules. While New York State managed its own Do Not Call Registry (State Registry), it observed that the use of the term "thirty days" as applicable to the time frame in which consumers had to wait to file a valid complaint after first appearing on the latest quarterly State Registry received no negative comment, was predominately understood by consumers and the industry, and telemarketers were able to technologically accommodate these parameters. Pursuant to pre-National Registry 21 NYCRR § 4602.5, the NYSCPБ State Registry was updated quarterly with new consumer information, not on a rolling basis as it is with the National Registry. The proposed thirty (30) day period for the download of updated consumer registrations by telemarketers is appropriate and will give consumers more immediate protection. The proposed time frame and the clarity of its definition will result in a more successful National Do Not Call program. The NYSCPБ supports this proposed amendment to the TSR and is confident that its implementation will benefit industry and consumers.

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Dated: February 25, 2004
Albany, New York

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