Submitted Electronically: http://www.regulations.gov

February 26, 2004

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

Re: Comments on Monthly Registry Access, Project No. R411001

To Whom It May Concern:

Countrywide Home Loans, Inc. ("Countrywide") is pleased to submit comments on behalf of the companies in the Countrywide Financial Corporation family in connection with the Commission's proposed amendment to the Telemarketing Sales Rule ("TSR") for Monthly Registry Access ("Proposed Rule"). Through its family of companies, Countrywide provides mortgage banking and diversified financial services in domestic and international markets. Notably, Countrywide is affiliated with Countrywide Bank, a division of Treasury Bank, NA, a national bank regulated by the Office of Comptroller of the Currency ("OCC") offering customers CDs, money market accounts, and home loan products. We appreciate the opportunity to comment on the Proposed Rules as we strive to coordinate our compliance with the TSR, and the Federal Communication Commission's ("FCC") rules implementing the Telephone Consumer Protection Act ("TCPA").

Countrywide applauds the Commission's efforts to provide consumers with an effective means for controlling unwanted telemarketing solicitations. We are also encouraged by the effectiveness of the Registry in achieving this goal.[1] Countrywide and its family of companies respect a consumer's right to not receive unwanted telemarketing calls. We are regularly obtain the National Do Not Call Registry and have a coordinated system and procedures across our family of companies to honor consumers' wishes to not receive telemarketing calls, whether from the Registry or from company-specific requests.

In that light, our comments reflect not only our strong commitment to protecting consumer privacy, but also our belief that it is imperative for consumers and businesses alike to have a single standard for accessing the Registry. This single standard should apply consistently and equitably to both Commission and FCC regulated entities. In addressing consumers' desires to avoid unwanted telemarketing calls, the rules for the

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[1] According to a Harris Interactive® survey released February 13, 2004, ninety-two percent (92%) of those who signed up [for the National Registry] report receiving fewer telemarketing calls, and twenty-five percent (25%) of those registered say they have received no telemarketing calls since signing up.

Registry must be workable for businesses.

Importance of Consistency between Commission and FCC Rules

While we understand the difficulties that the Commission faces in meeting its obligation under the Consolidated Appropriations Act of 2003 ("Appropriations Act") to amend the TSR in only sixty (60) days, coordination between the Commission and FCC is critical to any new rules for obtaining or using the Registry. Implementing a new Registry access standard that only applies to entities that are subject to the Commission's regulatory authority creates an uneven playing field for businesses. For example, it gives an unfair advantage to banks and depository institutions that are not subject to the Commission's proposed rule, even though these institutions offer many of the same products and services to consumers as entities regulated by the Commission. Under the Proposed Rule, many of the companies in the Countrywide family will pay at least three (3) times more to access and process the Registry than entities regulated by the FCC. This results from having to obtain the list three times as often. These cost differences may be even more exorbitant because of the proposed shortened timeframe in which to obtain and begin using the Registry. This is clearly not consistent with the intent expressed by Congress and the Administration in reacting to the legal challenges brought against the Commission's and FCC's coordinated action in originally adopting the Registry.

Additionally, without a consistent standard for Commission and FCC regulated companies, new consumers subscribing to the Registry are subject to different protections. The consumer confusion and frustration created by inconsistent rules would also likely lead to increased consumer complaints for companies and regulators, at greater burden and expense to all parties. This is true even with respect to companies who are making good faith efforts to comply with the standards to which they are subject. Even though Countrywide's OCC-regulated bank could theoretically benefit from maintaining the FCC's current rule, we firmly believe that one standard for Registry access is in the best interest of consumers and businesses, and is imperative to maintaining a fair and equitable marketplace for all.

Inconsistencies between FCC and Commission rules also create uncertainty with respect to application of state law to intrastate calls. Many state laws adopt the Registry for purposes of compliance with state law or incorporate the Registry into the state's do-not-call file. Additionally, some of these laws specifically reference the current federal standard of three months. These state law issues further emphasize the importance of harmonization of the FCC and Commission rules.

While the Term "Thirty (30) Days" Is More Precise than "Once a Month," the Key to a More Meaningful Guideline is Separate Concepts of Obtaining and Employing the Registry

Countrywide supports the Commission's attempts to provide a brighter line for industry on access to and use of the Registry and eliminate the attempts of some to temporarily circumvent the intent of the Registry with respect to new registrants.

However, the Appropriations Act only requires the Commission to adopt a rule requiring telemarketers to obtain the Registry once a month.[2] The Proposed Rule goes beyond the law by replacing the term "once a month" with the term "thirty (30) days" while at the same time expanding its application from the obligation to obtain the Registry to both obtain and employ the Registry.

A thirty (30) day period for both obtaining and using the Registry is unreasonable, because of the significant effort required to timely process the updated Registry and apply it across multiple active telemarketing campaign files that may be in use by both a company and its telemarketing vendors. Many companies, including Countrywide, already go to the expense and trouble of obtaining the list of telephone numbers on the Registry once a month to meet compliance obligations under the current three month rule, even though accessing the Registry is labor intensive and not-fully-automated. As the timeframes are shortened from the three month rule, companies face greater burdens with proper access to and use of the Registry to account for holidays and weekends resulting in more frequent downloads, tighter campaign management, and additional expense – all in an attempt by the Commission to shorten the time it takes to stop telemarketing calls to new registrants. In addition, because the Commission's process is not fully automated, the interplay of holidays and weekends would be even more exaggerated under the Proposed Rule. The burdens that would be created by the Proposed Rule are more specifically discussed in our response to the Commission's questions about the burdens of the Proposed Rule.

The Proposed Rule is an Extremely Problematic Remedy for the Attempts by a Few Companies to Temporarily Subvert the Rule for New Registrants

It should be noted that the Commission's concern with the term "once a month" and the related strategies for subverting the intent of the Registry would only work temporarily and only with respect to new registrants. The Commission has publicly acknowledged that the Registry is working and that the majority of sellers and telemarketers are complying with the Registry.[3] This data on consumer reaction to the Registry suggests that most sellers and telemarketers are not attempting to temporarily subvert the intent of the Registry with respect to new registrants.

Separation of the Concepts of Obtaining and Using the Registry Would Better Solve the Commission's Temporary Subversion Concern

The following revision to the Proposed Rule would address many business concerns with timely processing, shorten the processing period for new registrants, and eliminate any temporary circumvention. Section 310.4(b)(3)(iv) should read as follows:

[2] "Not later than 60 days after the date of enactment of this Act, the Federal Trade Commission shall amend the Telemarketing Sales Rule to require telemarketers subject to the Telemarketing Sales Rule to obtain from the Federal Trade Commission the list of telephone number on the do-not-call registry once a month." Pub. L. No. 108-199, 188 Stat. 3.
[3] "The telemarketing industry has shown exceptional compliance with the National Do Not Call Registry," stated Timothy J. Muris, Commission Chairman.

> (iv) The seller or a 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), obtaining a version of the "do-not-call" registry from the Commission at least once every thirty (30) days and employing such version of the registry no more than thirty (30) days after it was obtained, and maintains records documenting this process.

Prior to adoption of the Registry, every state maintaining do-not-call lists recognized the need to allow a reasonable amount of time between the date that the state makes its updated do-not-call file available and the date when the updated file becomes effective. None of the state do-not-call requirements are as onerous with respect to the time for processing as the Proposed Rule. We believe that the revised language offered above is a more reasonable standard because it strikes a reasonable balance between a consumer's right to have telemarketing calls stopped within a reasonable period of time and a telemarketer's ability to cost-effectively obtain the Registry and apply it across numerous and varied systems and files.

The Compliance Burdens Imposed by the Proposed Rule are Huge and Unrelated to Use of the Term "Thirty (30) Days" or "Monthly"

We support the Commission's desire to have consumers' do-not-call requests honored in a reasonable time period. The current rule requires telemarketers to employ a version of the Registry that was obtained "no more than ninety (90) days prior to the date any call is made." As previously noted, many companies obtain Registry updates on a monthly basis to allow adequate time to ensure that do-not-call telephone numbers are scrubbed within the three month period. However, the Proposed Rule fails to provide companies with adequate time to obtain and use the Registry.

Under the Proposed Rule, Countrywide will likely have to access the Registry every one to two weeks (26 to 52 times per year) instead of twelve (12) times per year, as we do today. In addition to the added burden and costs associated with accessing the Registry on a weekly or bi-weekly basis, there will likely be additional costs incurred to process and apply each updated Registry to all active telemarketing campaign files. Today, a telemarketing campaign typically runs forty-five (45) to sixty (60) days (i.e., from the date that the list was generated to the date that the last telemarketing call is made to a number on the list). Under the current rule, even if a campaign runs for sixty (60) days, it is only necessary to suppress the Registry at the time that the list is generated. Under the Proposed Rule, it will be necessary to create unique suppression files to apply Registry updates to any telemarketing campaign that is scheduled to run more than thirty (30) days.

In addition to internal cost to create unique suppression files to apply Registry updates to active telemarketing campaigns, telemarketing vendors that make calls on our behalf, charge us an additional $2 to $3 per thousand to process suppression files against our active telemarketing campaigns. Using last month's Registry update of

approximately 1 million records as an example, we would have paid approximately $60,000 more to our telemarketing vendors to have suppression files of updated Registry records processed against each telemarketing campaign in process.

The alternative language provided above would at least allow companies to largely follow existing campaign practices without the need for unique suppression files. As written, the Proposed Rule imposes undue costs and burdens on companies such as Countrywide and provides little additional privacy protections for consumers.

The Effective Date of Proposed Rule Should Be Contingent on Several Factors

Industry has invested significant time and effort over the past twelve months modifying, testing and implementing systems, databases, telephone equipment, procedures, and training to comply with the 2003 revisions to the TSR and rules implementing the TCPA. The work to reconcile the relationship between the Commission's and FCC's final rules and the timing of release of those rules made this burden greater. Compliance with the Registry and other requirements has already imposed significant expenses and, at many companies, delayed other development projects necessary to offer products to consumers. To now be faced with significant additional compliance obligations, less than five (5) months after the current Registry requirements became effective, and less than thirty (30) days after the effective date for caller ID, is excessive, unbalanced and unwarranted, particularly given the protections that consumers already have under the current regulatory rules.

The Proposed Rule should not become effective until all of the following have occurred, or twelve months from when the revised rule becomes final, whichever is later:

- The language in the Proposed Rule is revised, consistent with the intent of the Appropriations Act
- The FCC's and Commission's rules are harmonized;
- The Registry access process has been fully automated;
- An independent audit of the current Registry maintenance process has been conducted to verify that the current Registry maintenance process is accurately updating records, including inclusion of newly added records in all geographic areas and deletions of telephone numbers that are no longer in service; and,
- After a single federal standard is adopted, certain states should be given adequate time to pass any additional legislation resulting from the revised rule.

All of the conditions are important to the adoption of a fair and reasonable final rule.

Conclusion

Countrywide is committed to protecting consumer privacy and supports the Commission's goal of providing consumers with assurances that their do-not-call registrations will be effective within a reasonable period of time. However, we firmly believe that implementing the Proposed Rule will impose undue additional burdens and expense on entities that are subject to Commission regulatory authority. Countrywide appreciates the opportunity to comment on this very important matter and would welcome the opportunity to discuss these comments further or answer and questions that the Commission staff may have regarding our views on this issue. Feel free to contact me at 818.871.4856 with any questions about these comments.

Sincerely,

Christine Frye
Chief Privacy Officer
Countrywide Financial Corporation
5220 Las Virgenes, AC-11
Calabasas, CA 91302

Cc: FCC Commissioner Michael Powell