



February 26, 2004

Federal Trade Commission  
Office of the Secretary  
Room 159-14 (Annex D)  
600 Pennsylvania Avenue, N.W.  
Washington, DC 20580

Re: Monthly Registry Access, Project No. R411001

Gentlemen:

Set forth herein are the comments of Marketing Systems, Inc. (“MSI”), a wholly-owned subsidiary of MBNA America Bank, N.A., in response to the Notice of Proposed Rulemaking (“NPRM”) issued by the Federal Trade Commission (“Commission”) regarding amendment of the Telemarketing Sales Rule (“TSR”). The amendment would require sellers and telemarketers (hereafter, “telemarketers”), in complying with the Do Not Call provisions of the TSR, to use a version of the National Do Not Call (“NDNC”) Registry obtained no more than 30 days before any call is made.

**Overview**

MSI believes the Commission should have – and balance – two goals as it finalizes the details of the new downloading-frequency requirement. First, the final rule should provide adequate compliance guidance to telemarketers. Second, and of equal importance, the same standard should give telemarketers reasonable flexibility to establish convenient schedules for performing monthly downloading while avoiding extra expenses involved in downloading on weekends or holidays. MSI believes both goals can be reached by requiring that monthly downloading be performed at intervals of not less than 25 nor more than 35 days.

## Comments

MSI has the following comments on the specific questions raised in the NPRM:

1. Q. Is the term “thirty (30) days” more precise than the term “monthly”, and would the former term serve as a more meaningful guideline for telemarketers as they seek to comply with this provision?

A. Either of the above terms, if appropriately qualified, could provide meaningful compliance guidance. However, because providing flexibility to telemarketers should be an equally important goal, MSI believes that a somewhat different, but not inconsistent, approach should be adopted. Specifically, MSI recommends that the interval between monthly “downloading dates” be set at not less than 25 nor more than 35 days. Such an approach would accommodate telemarketers who wish to perform downloading either (i) on the same date each month (e.g. the 15<sup>th</sup>); or (ii) the same day each month (e.g. the 3<sup>rd</sup> Friday); or (iii) on dates/days that might vary slightly from month to month. The “25 – 35” approach would allow telemarketers to avoid overtime and other expenses resulting from having to perform downloading on weekends or holidays, and to avoid the possibility of having to perform more than 12 downloadings in a year. In addition, because there would have to be at least a 25-day interval between downloading dates, the potential abuse referred to in Question 2 could not occur. Finally, the requirement that there be a downloading in every month would further protect against possible abuse.

2. Q. Will use of the term “thirty (30) days” rather than “monthly” prevent sellers and telemarketers from attempting to subvert the intent of the Registry by such stratagems as downloading the Registry and “scrubbing” their call lists on the last day of a month and then immediately doing it again on the first day of the succeeding month.

A. See MSI’s comments in response to Q1.

3. Q. Does the use of the precise standard, embodied in the phrase “thirty “30” days, make clear the requisite interval at which data must be obtained from the National Do Not Call Registry? Is there some other standard that would accomplish this better?

A. See MSI’s comments in response to Q1.

4. Q. What, if any, differences exist in the compliance burdens on industry resulting from use of the term “thirty (30) days” rather than “monthly”? Why? What, if any, differences exist in the benefits for consumers resulting from use of the term “thirty (30) days” rather than “monthly”? Why?

A. As discussed above, MSI does not believe the Commission should adopt either the “thirty (30) days” or the “monthly” standard. Rather, we believe the Commission should adopt a “25 – 35” standard that would reduce telemarketers’ compliance burdens without adversely impacting consumers who want their registration on the NDNC Registry to be effective more quickly.

5. Q. What should be the effective date of the proposed amendment? Why? What, if any, factors might necessitate a particular amount of lead time for industry to be able to comply with the proposed amendment? With respect to any particular recommended effective date, what are the relative costs and benefits for industry and consumers?

A. The Commission notes correctly that telemarketers “may need an extended period to make the necessary modifications on their systems and procedures to comply” with the new downloading frequency requirement. Using past effective dates as a guideline, and given that enactment of the new requirement was totally unexpected by telemarketers, MSI believes that an effective date one (1) year after publication of the final rule is reasonable and appropriate.

6 – 8 Not applicable

9. Q. Please identify any relevant federal, state or local statutes or rules that may duplicate, overlap or conflict with the proposed rule.

A. Several states originally mandated specific download intervals for their do not call programs, and continue to mandate those intervals even though they now use the NDNC Registry. MSI believes-but cannot confirm-that the flexible “25-35” approach it recommends would avoid conflict with state requirements. Under all circumstances, however, we believe the Commission should take steps to harmonize its downloading (and other) requirements with those of the states.

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Thank you for your consideration on this matter. If you have any questions, please contact the undersigned.

Respectfully submitted,

MBNA America Bank, N.A.

by/s/Joseph R. Crouse  
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