

Jodi Golinsky
Vice President
Legislative/Regulatory & Privacy Counsel

MasterCard International

Law Department
2000 Purchase Street
Purchase, NY 10577-2509
914 249-5978
Fax 914 249-3648
E-mail jodi_golinsky@mastercard.com
www.mastercard.com

*MasterCard
International*



Via Electronic Delivery

February 26, 2004

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

Re: Monthly Registry Access, Project No. R411001

To Whom It May Concern:

MasterCard International Incorporated ("MasterCard")¹ submits this comment letter in response to the Proposed Rule ("Proposal") published by the Federal Trade Commission ("Commission") to require sellers and telemarketers, in complying with certain provisions of the Commission's Telemarketing Sales Rule ("TSR"), to use a version of the National Do Not Call Registry ("Registry") obtained from the Commission no more than thirty days prior to the date any call is made. MasterCard appreciates the opportunity to provide its comments to the Commission.

Background

On January 23, 2004, President George Bush signed into law the Consolidated Appropriations Act of 2004 ("Act"). As part of the Act, Congress required that "not later than 60 days after the date of enactment of this Act, the [Commission] shall amend the [TSR] to require telemarketers subject to the [TSR] to obtain from the [Commission] the list of telephone numbers on the [Registry] once a month." The current safe harbor provision in the TSR allows telemarketers and sellers to obtain the Registry "no more than three (3) months prior to the date any call is made." The Proposal would amend this provision to require a telemarketer or seller to obtain the Registry "no more than thirty (30) days prior to the date any call is made."

¹ MasterCard is a SEC-registered private share corporation that licenses financial institutions to use the MasterCard service marks in connection with a variety of payments systems.

The Commission has specifically requested comment on two items. First, the Commission seeks comment on whether its proposed amendment to the safe harbor, *i.e.*, establishing a thirty-day timeframe, is the preferred mechanism to implement the congressional mandate. Second, the Commission seeks comment on an appropriate effective date for any final rule implementing the Proposal ("Final Rule"). We also note that the Commission states that the Act "provides no discretion in the matter of whether to amend" the safe harbor in the TSR and that comments "going to that issue would not be responsive to [the Proposal] and will not be considered."

Amendment to the TSR: Implementation of "Once a Month" Obligation

The Proposal would implement the congressional mandate to require telemarketers and sellers to obtain the Registry "once a month" by amending the safe harbor to require such entities to obtain the Registry every thirty days. The Commission notes that it believes the thirty day requirement achieves greater clarity and precision in effectuating the congressional mandate. The Commission also seeks to avoid a standard that allows a person to claim technical compliance with the provision by accessing the Registry at 11 p.m. on the last day of one calendar month and again at 12:01 a.m. on the first day of the next.

MasterCard understands the desire to achieve greater clarity with respect to the requirements in the Proposal. We are concerned, however, that the approach included in the Proposal deviates from the plain language of the Act and, in doing so, eliminates the flexibility intended by the Act. For example, the Act would appear to permit a telemarketer to obtain the Registry on the same day of each month (*e.g.*, the 15th of the month). However, the Proposal would appear not to accommodate this approach in all instances since this approach could result in a thirty-one day time period between "scrubbings" depending on the length of the particular month involved. There may be other, similar approaches that would be acceptable under the congressional direction of "once a month" (*e.g.*, the first business day of each month) that the Proposal should accommodate but does not.

To implement the flexibility provided in the Act, while precluding circumventions of the law, we urge the Commission to state in the Final Rule that the Registry must be obtained "once a month" and to provide examples of the types of approaches that would meet such a standard. At a minimum, these examples should include obtaining the Registry: (i) every thirty days; and (ii) on the same day of each month (or the first business day after such day). We would also urge the Commission to include any other examples of legitimate means of obtaining the Registry "once a month."

Amendment to the TSR: Effective Date

The Commission is seeking input as to an appropriate effective date for a Final Rule. The Commission notes that it needs time to modify the Registry system to account for increased download traffic that will result once a Final Rule is implemented. The Commission also believes that telemarketers and sellers may need time to adjust their

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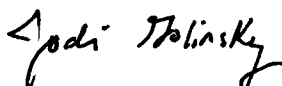
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compliance systems. We applaud the Commission for seeking input on an appropriate effective date for a Final Rule. In light of the significant systems changes that will be necessary to increase the "scrubbing" of telemarketing lists against the Registry, we urge the Commission to give telemarketers and sellers twelve months to comply with the Final Rule.

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If you have any questions concerning our comments, or if we may otherwise be of assistance in connection with this issue, please do not hesitate to call me, at the number indicated above, or Michael F. McEneney at Sidley Austin Brown & Wood LLP, at (202) 736-8368, our counsel in connection with this matter.

Sincerely,



Jodi Golinsky
Vice President
Legislative/Regulatory & Privacy Counsel

cc: Michael F. McEneney, Esq.