STONEBRIDGE LIFE
Insurance Company

Baltimore Administrative Office
520 Park Avenue
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ORIGINAL

February 26, 2004

The 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

Dear Commissioners:

On behalf of Stonebridge Life Insurance Company, I would like to submit comments relative to the above-referenced matter concerning the utilization of the phrase "thirty (30) days" rather than the term "monthly" as used in the statutes. It is recited in Section B - Discussion that the Commission believes that the term "thirty (30) days" achieves greater clarity and precision in effectuating Congress' two-fold intent in the Appropriations Act, that being, to shorten from quarterly to monthly the interval for telemarketers and sellers to purge registered telephone numbers from their calling list, and to enable consumers to assert a valid Do Not Call complaint 30 days after entering their numbers on the Registry rather than having to wait three months. In the Commission's analysis, it states that the Commission does not believe that the modifications requiring sellers and telemarketers to obtain data from the National Registry at a more frequent interval will create a significant burden on sellers or telemarketers that have already established systems to comply with the requirement in the existing TSR that require accessing the Registry database on a quarterly basis. We disagree with that position.

The Commission has acknowledged that the TSR may not apply to some telemarketing of insurance products and services, but rather that its applicability depends on the specific facts of a campaign. Notwithstanding whatever exemptions might apply, there may be instances where an insurance provider determines it should or must comply with the TSR, and in such instances, the new rules will prove quite burdensome, contrary to the Commission's stated belief. When an insurance carrier undertakes multiple telemarketing efforts, the marketing campaign from the time a list of names and telephone numbers of proposed consumers is established to the actual date of call may be conducted over a number of weeks. Generally, these campaigns can be managed from deletion of the name by the insurance underwriter and further scrubbing of the list by the telemarketing firm from within the quarterly time frame, but given the nature of multiple campaigns within this 30 day period, it is necessary that the list be scrubbed daily. In other words, it would be necessary for us to update the list on a daily basis, and to scrub the list the day the telemarketer is calling. Since we have different programs starting every day and run at least

four weeks on average, we are literally scrubbing the list, as indicated above, on a daily basis. This is an expensive and unreasonable burden placed upon the insurance underwriter.

Under the new rule, the insurance underwriter is going to have to time the downloading of the information and the scrubbing of the list to recognize the 30 day period to avoid any possibility that the customer will lodge a complaint on the 31st day because the scrubbing did not occur within the window period. This rule leaves very little or no room for error. This was not the intent of the requirement. There has to be consideration given to the business interest in trying to manage marketing campaigns within the time frames to allow full compliance with the National Do Not Call Registry.

We also note that the Commission's newfound belief that modifications requiring sellers and telemarketers to obtain data from the National Registry at a more frequent interval will not create a significant burden on sellers or telemarketers that have already established systems to comply with the quarterly requirement appears at odds with prior Commission findings. In its Statement of Basis and Purpose adopting the TSR amendments that created the National Do Not Call Registry, the Commission specifically considered – and rejected – the very same monthly requirement Congress has now foisted on the agency. It did so on grounds that a shorter monthly approach would be "extremely burdensome" to the industry, and "particularly burdensome for small businesses." As there were no hearings or any fact-finding by Congress prior to mandating the change at issue here, and the Commission does not support with facts or analysis its belief that modifications required to obtain registry data more frequently will not create a significant burden, there is nothing to counter the prior finding to the contrary.

I trust that you will give consideration to our comments.

Very truly yours,

Paul C. Latchford rgl

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Before the
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

In the Matter of	)	
	)	
Telemarketing Rulemaking –	)	Project No. R411001
Monthly Registry Access	)	
	)	

COMMENTS OF THE AMERICAN TELESERVICES ASSOCIATION

The American Teleservices Association ("ATA"), by counsel and on behalf of its members, hereby comments on the Notice of Proposed Rulemaking seeking input regarding amendment of the Telemarketing Sales Rule ("TSR") to require that entities subject to it obtain the list of telephone numbers enrolled on the National Do-Not-Call Registry ("DNCR") once a month rather than once every three months. 1/

There is no escaping the irony of the fact that, on the same day Chairman Muris extolled telemarketers for their "exceptional compliance" with the DNCR, 2/ the Commission issued an NPRM seeking comment on how to further tighten rules that have been in effect but a few months and to which the industry is dutifully adhering. Though ATA acknowledges the Appropriations Act essentially forces the FTC's hand

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1/ *Telemarketing Sales Rule*, 69 Fed. Reg. 7330 (Feb. 13, 2004) ("NPRM") (implementing Consolidated Appropriations Act of 2004, Pub. L. 108-199 ("Appropriations Act") by proposing amendment to 16 C.F.R. § 310.4(b)(3)(iv)).

2/ *Compliance with Do Not Call Registry Exceptional*, News Release, Feb. 13, 2004, available at http://www.ftc.gov/opa/2004/02/dncstats0204.htm.

with respect to the proposed TSR amendment, 3/ we cannot help but note the new requirement was adopted without factfinding, debate, hearing, or any other legislative process exploring the need for, or the efficacy or costs of, the mandated change. This is particularly notable in that this Commission originally proposed the 30-day rule the Appropriations Act now requires, but after thoroughly considering the issue modified the proposal to provide for quarterly DNCR downloads in the final rule. 4/

In rejecting a 30-day rule, the Commission noted that "[i]ndustry commenters were unanimous ... that a 30-day requirement would be extremely burdensome," and that such a "requirement would be virtually impossible to meet without shutting down operations for a day to scrub their lists." *Id.* at 4646. This latter impact, the Commission found, would be "particularly burdensome for small businesses with few employees or those that do not use sophisticated technology." *Id.* These factors "persuaded [the Commission] that the costs of requiring monthly updating outweigh any additional benefits ... to consumers from such a provision." *Id.* at 4647. The Appropriations Act obliterates this careful deliberation on the appropriate frequency for DNCR updates after only a few months' experience with the rules, and with no discernible concern for the economic harm the new requirement will impose.

3/ *Cf.* NPRM at 7331 ("the Appropriations Act provides no discretion ... whether to amend the TSR" with respect to frequency of updating DNCR downloads).

4/ *See Telemarketing Sales Rule; Final Rule*, 68 Fed Reg. 4580, 4645-47 (Jan. 29, 2003) (*Amended TSR Order*").

The Commission accordingly should exercise the discretion left to it under the Appropriations Act in a manner that mitigates as much as possible the economic harm teleservices providers face from the rule change, particularly that likely to befall small businesses. Requiring entities subject to the TSR to transition from quarterly to monthly updates of their DNCR downloads effectively trebles the administrative cost of the update process. In some cases, this will transform the process from one accomplished in the ordinary flow of business into one that entails monthly losses of a full day's productivity as operations are shut down, as noted above, to facilitate the updates. Amendment of the rule also will require revision of budgets and forecasts, only recently put in place to accommodate the advent of the DNCR just four months ago, to account for lost operating time and the additional manpower the new rule portends.

ATA thus respectfully submits that, whether the Commission adopts a 30-day or monthly DNCR update requirement to implement the Appropriations Act, 5/ it must moderate the impact of the rule change by allowing substantial lead time for businesses to come into compliance with the new rule, and by granting additional DNCR fee relief

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5/ *See* NPRM at 7330 & 7332 ¶¶ 1-4. ATA takes no position whether a monthly or 30-day requirement is preferable, other than to note that both are substantially more restrictive and more costly than the current quarterly requirement. However, should the Commission adopt a 30-day update requirement, the final rule should specify that if the thirtieth day falls on a weekend or holiday, the update need not be implemented until the following business day. There is no reason the amended updating requirement should, in addition to tripling administrative costs, necessitate overtime or similar extra costs simply because the thirtieth day falls on a weekend or holiday. This next-business-day approach conforms to that found elsewhere in the Commission's rules. *See, e.g.*, 16 C.F.R. §§ 1.14(c), 4.3(a).

for small businesses. First, the Commission should establish January 1, 2005, as the effective date for the amended rule. When the Commission announced adoption of the DNCR, it afforded the teleservices industry approximately nine months before the rules took effect to modify their systems and practices, including those necessary to update DNCR downloads on a quarterly basis. 6/ The Commission must adopt the amendment required by the Appropriations Act by March 23, 2004. 7/ Given the February 26, 2004, comment date specified here, NPRM at 7330-31, and the need to properly consider all submissions, the Commission likely will not promulgate the new rule until close to the Appropriation Act's deadline. A January 1, 2005, effective date thus would provide approximately the same nine months previously afforded to come into compliance with TSR amendments involving new rules that required revised systems and practices. 8/

Alternatively, the Commission must at a minimum give entities subject to the new monthly DNCR updating requirement until October 1, 2004, to comply with the

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6/ *See FTC Announces Final Amendments to Telemarketing Sales Rule, Including National "Do Not Call" Registry*, News Release, Dec. 18, 2002 (announcing adoption of DNCR); *Telemarketing Sales Rule Fees*, 68 Fed. Reg. 16238 (Apr. 3, 2003) (establishing October 1, 2003, as effective date for DNCR compliance).

7/ *See* Appropriations Act, Division B, Title V ("not later than 60 days after the date of enactment ... the [FTC] shall amend the [TSR] to require [downloading] the registry once a month").

8/ It is notable in this regard that, when the Commission adopted new abandoned call rules, *see* 16 C.F.R. §§ 310.4(b)(1)(iv), 310.4(b)(4), it intended them to take effect sixty (60) days after promulgation, but later found it necessary to extend the lead time for compliance with the recorded message provision of the rule, then later the entire rule, for an additional six months due to industry's need to acquire new equipment and/or update their practices. *See Notice Concerning Telemarketing Sales Rule*, 68 Fed. Reg. 14659 (Mar. 26, 2003); *Telemarketing Sales Rule*, 68 Fed. Reg. 16414 (Apr. 4, 2003).

amended rule. This will allow forecasts and budgets adopted in anticipation of the first year of DNCR compliance to run their course, and for entities subject to the rules to account for any new requirement in their year-two DNCR business plans rather than altering those already in place. This is especially vital for small businesses affected by the rule change, which the Commission has noted will find the new requirement "particularly burdensome" from an economic perspective. *See supra* at 2 (citing *Amended TSR Order*, 68 Fed. Reg. at 4646).

The Commission also should help offset the economic losses small business will incur from the monthly DNCR download requirement by providing additional small business relief from DNCR fees. The TSR currently allows companies to obtain access to five area codes of data from the DNCR at no charge. 16 C.F.R. § 310.8(c). The Commission adopted this accommodation solely to ease the cost of DNCR compliance for small businesses. 9/ Now that the FTC has been forced to treble the administrative cost to small businesses to comply with the DNCR, it should lighten that additional

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9/ *Telemarketing Sales Rule Fees; Final Rule*, 68 Fed. Reg. 45134, 45140-41 (July 31, 2003) ("*Amended TSR Fee Order*"). In its comments on the DNCR fees, ATA addressed the substantial constitutional and equitable problems with the differential treatment of entities that is built into the overall fee structure, and the manner in which this shifts burdens among those required to access the DNCR to engage in protected speech. *See id.* at 45140. However, so long as the Commission continues to offer an initial level of access to the DNCR at no cost in the name of aiding small businesses, and that and other aspects of the fee structure avoid being deemed unconstitutional, *cf. Mainstream Mktg. Servs., Inc. v. FTC*, 2004 WL 296980 (10th Cir. Feb. 17, 2004), further small business relief in the wake of the Appropriations Act may be considered. ATA does not, in suggesting such relief, waive or concede any constitutional or administrative procedure arguments it has made or may have regarding the DNCR fee rules.

burden by correspondingly decreasing DNCR access fees for small businesses. Specifically, the Commission should revise Section 310.8(c) to allow access to the first twenty-five (25) area codes of data, rather than the first five area codes, at no cost.

Amending the TSR to increase the number of area codes of DNCR data available at no charge will not result in a shortfall of DNCR fees necessary to operate the registry, as it appears the Commission vastly underestimated the number of entities that pay for DNCR data. The Commission based adoption of the existing fee structure on an "estimate that 10,000 entities will be required to access the ... registry" and thus pay DNCR fees. *Amended TSR Fee Order*, 68 Fed. Reg. at 45140. *See also id.* at 45140-41. Since the DNCR has become operational, however, ATA has learned from FTC staff that approximately *48,000* entities are accessing it. Assuming the Commission was even close to correct in its estimate that each entity accessing the DNCR will purchase an average of 73 area codes of data, *id.* at 45141 n.5, it is now collecting DNCR fees from *four to five* times as many entities as expected. A minor change in how many area codes of DNCR data may be accessed at no charge, in order to prevent undue economic harm to small business from congressionally mandated rule changes, clearly is in order.

CONCLUSION

For the foregoing reasons, ATA respectfully requests that the FTC implement the TSR amendment required by the Appropriations Act's mandate to increase the frequency of DNCR downloads from quarterly to monthly by adopting an effective date of January 1, 2005, for the rule revision, and by amending 16 C.F.R. 310.8(c) to specify

"there shall be no charge for the first twenty-five area codes of data accessed by any person" from the registry.

Respectfully submitted,

By: _____

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February 26, 2004