

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

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In the Matter of Notice of Proposed : Telemarketing Rulemaking – User Fees
Rulemaking on : FTC File No. R411001
Telemarketing Sales Rule :
User Fees :
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**JOINT COMMENTS OF THE ELECTRONIC RETAILING
ASSOCIATION AND PROMOTION MARKETING ASSOCIATION
ON THE COMMISSION’S NOTICE OF PROPOSED
RULEMAKING ON TELEMARKETING SALES RULE USER FEES**

The Electronic Retailing Association (“ERA”) is the leading trade association representing the electronic retailing industry. Its mission is to foster the use of various forms of electronic media – television, Internet, telephone, radio – to promote goods and services to consumers. The ERA has over 300 member organizations encompassing a wide range of entities, such as advertising agencies, direct response marketers, telemarketers, Internet and “brick and mortar” retailers, fulfillment service providers and television shopping channels.

The Promotion Marketing Association (“PMA”) has been the leading non-profit association representing the promotion marketing industry since 1911. Its membership consists of more than 650 companies representing diverse aspects of the industry, including many Fortune 500 consumer goods and service companies, advertising and promotion agencies, and university faculty who educate about promotional activities as part of a business curriculum.

As noted in our respective comments filed separately in connection with the Commission's Notice of Proposed Rulemaking to Amend the Telemarketing Sales Rule (the "Rule NPRM"), the ERA and PMA believe that the Commission's proposed national Do Not Call ("DNC") list is unnecessary. Nevertheless, in the event that a national DNC list is implemented, we support the comments filed by the Direct Marketing Association ("DMA") in response to this Notice of Proposed Rulemaking and Request for Public Comments on the Telemarketing Sales Rule User Fees.

As noted in the DMA's comments, the Commission's proposal to collect user fees from telemarketers for administration of its proposed national DNC list is not authorized under the Independent Offices Appropriation Act (the "IOAA"). 31 U.S.C. § 9701. While the IOAA permits agencies to establish regulations to collect charges for providing users with some "service" or "thing of value," there is nothing to suggest that the establishment of a national DNC List confers any real benefit or thing of value upon telemarketers. Moreover, even if the Commission had the authority to collect user fees from telemarketers for administration of the national DNC list, its proposal to do so is flawed in that it fails to allocate the costs of administration according to the percentage of benefit the list would confer upon consumers and the percentage of list value that would inure to the benefit of telemarketers. The Commission has also failed to specify who would bear the burden of additional costs in the likely event that its cost estimates for administration of the DNC list prove inadequate.

As such, the ERA and PMA support the conclusion reached in the DMA comments that the Commission must fund any proposed national DNC list entirely from federal appropriations or consumer fees.

Respectfully Submitted:

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