



- would be charged \$6 per subsequent area requested during the second six months after the initial request,
- would face a maximum charge of \$3,000 annually to access the registry, and
- would be required to make a separate request for each client.<sup>4</sup>

Consumers would not be charged to have their telephone numbers placed on the registry.<sup>5</sup>

The Commission seeks comment on this proposal, particularly regarding a series of fifteen questions presented in the *Notice*.<sup>6</sup>

3. The National Association of State Utility Consumer Advocates (“NASUCA”)<sup>7</sup> hereby submits comments to the *Notice*. NASUCA believes that the Registry would provide considerable benefit to consumers by helping to reduce or eliminate unwanted telemarketing calls to consumers’ homes. And while telemarketers should have easy access to the Registry, NASUCA realizes that it is necessary for the Commission to meet the funding objectives for the Registry. In that regard, implementation of an effective fee structure is essential to the Registry’s success.

4. NASUCA concurs with the Commission’s determination that consumers should not have to pay to be placed on the Registry. NASUCA agrees that consumers should not be charged “to protect their privacy from unwanted and abusive telemarketing calls.”<sup>8</sup> As

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<sup>4</sup> *Id.*

<sup>5</sup> *Id.* at 37363.

<sup>6</sup> *Id.* at 37367-68.

<sup>7</sup> NASUCA is an association of 42 consumer advocates in 40 states and the District of Columbia. NASUCA’s members are designated by the laws of their respective states to represent the interests of utility consumers before state and federal regulators and in the courts.

<sup>8</sup> 67 Fed. Reg. at 37363.

NASUCA noted in earlier Comments, free registration for consumers would make the Registry more consumer-friendly.<sup>9</sup>

5. NASUCA generally agrees with the Commission's fee proposal. However, the proposal should be fine-tuned – including the establishment of a minimum annual fee – to remove some inequities in the proposal and to deter “gaming” of the system. In addition, the Commission should require that telemarketers and sellers access the Registry monthly, in order to ensure that their calling lists are up-to-date. NASUCA also recommends that Registry access be for the limited purpose of removing numbers from telemarketers' calling lists.

**NASUCA Recommends a Minimum Annual Fee to Access the Registry.**

6. The most important area to be addressed is the proposal to allow telemarketers access to five area codes at no charge. According to information from the North American Numbering Plan Administration, 33 states and the District of Columbia have five or fewer area codes.<sup>10</sup> Thus, under the proposal, funding of the Registry would largely come from telemarketers in only about one-third of the states.

7. In addition, under the proposal, some telemarketers would pay nothing to access the Registry for the do-not-call numbers in as many as five states, while other telemarketers seeking the numbers for just one state could be charged for Registry access.

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<sup>9</sup> See NASUCA's Do-Not-Call Registry Comments, filed in FTC File No. R411001 on April 15, 2002 (“Registry Comments”), at 6-7.

<sup>10</sup> See [http://docs.nanpa.com/cgi-bin/npa\\_reports/nanpa?function=list\\_npa\\_geo\\_location](http://docs.nanpa.com/cgi-bin/npa_reports/nanpa?function=list_npa_geo_location) (accessed May 30, 2002). Arizona, Iowa, Louisiana, Washington and Wisconsin have five each; Alabama, Colorado, Kansas, Kentucky and Maryland have four each; Arkansas, Mississippi, Oklahoma, Oregon and South Carolina have three each; Connecticut, Nebraska, Nevada and Utah have two each; Alaska, Delaware, D.C., Hawaii, Idaho, Maine, Montana, New Hampshire, New Mexico, North Dakota, Rhode Island, South Dakota, Vermont, West Virginia and Wyoming have one each.

For example, a telemarketer with a regional client would have free access to the Registry for all the numbers in Idaho, Montana, North Dakota, South Dakota and Wyoming, while a telemarketer whose client desires to canvass only Minnesota – which has seven area codes – would be charged \$84 annually.

8. Another inconsistency relates to the number of customers in the various area codes. There can be wide differences in the number of telephone customers in the various area codes, causing inconsistencies in what a telemarketer may be paying for. For example, under the proposal, a telemarketer would have free Registry access for all the do-not-call numbers in Wisconsin, which has five area codes. On the other hand, Registry access for the do-not-call numbers in Minnesota’s seven area codes would cost \$84 annually – despite the fact that Minnesota has approximately 200,000 fewer telephone customers than Wisconsin.<sup>11</sup>

9. These scenarios could lead some telemarketers – particularly those with multiple offices or affiliated companies that have different names – to “game” the system in order to avoid charges for Registry access. The Commission has noted that it considers “distinct corporate divisions of a single corporation” to be separate sellers for purposes of the Telemarketing Sales Rule (“TSR”).<sup>12</sup> Thus, a telemarketer that has multiple offices or affiliated companies that are separate divisions within the corporation could have numerous “sellers” under the TSR, and therefore would have numerous opportunities to have free access to up to five area codes. It would be possible, for

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<sup>11</sup> Minnesota has 3,214,930 access lines, while Wisconsin has 3,474,589. See “Local Telephone Competition: Status as of June 30, 2001,” Federal Communications Commission, Common Carrier Bureau, Industry Analysis Division (February 2002), Table 6.

<sup>12</sup> 67 Fed. Reg. at 37365.

example, for a telemarketer with three offices to access the Registry's do-not-call numbers in Delaware, D.C., Maryland, Virginia and West Virginia (a total of 14 area codes) at no cost, and thus save \$168 per client. There are numerous other examples in which telemarketers could attempt to save hundreds of dollars per client by gaming the proposed system.

10. Although telemarketers must identify on whose behalf they are making the request,<sup>13</sup> some telemarketers may have an economic incentive to avoid the fee. Thus, it may be necessary for the Commission to dedicate enforcement resources to investigate whether telemarketers are gaming the system.

11. To help remedy these problems, NASUCA suggests that the Commission establish a minimum annual charge for telemarketers to access the Registry. This fee should apply to all telemarketers, including those described as "small businesses."<sup>14</sup> Although not a perfect solution for dealing with the problem of differences in area codes' access lines discussed above, a minimum annual charge would help make the funding of the Registry more equitable by requiring all telemarketers to pay something to access the Registry. It would also take away many of the incentives to "game" the system.

12. Because the Commission is proposing to charge \$12 per area code, NASUCA recommends that the Commission charge a minimum annual fee equal to the charge for five area codes, i.e., \$60, for telemarketers to access the Registry. A \$60 minimum fee would appear to be consistent with the directive contained in OMB Circular A-25 that the cost of collecting a user fee not represent "an unduly large part of the fee for the

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<sup>13</sup> *Id.* at 37369.

<sup>14</sup> *Id.* at 37366.

activity,”<sup>15</sup> and would address the Commission’s concern that the user fee not be overly burdensome on small businesses.<sup>16</sup> The Commission could also establish a waiver process for small businesses, upon a showing that the fee is too burdensome. A minimum annual fee, such as that recommended by NASUCA, is necessary for the Registry’s success.

**Telemarketers Should Access the Registry Monthly to Keep Call Lists Up-to-Date.**

13. The Commission’s annual fee proposal would give telemarketers unlimited access to the do-not-call numbers for specified area codes for twelve months.<sup>17</sup> The Commission should also require that telemarketers periodically access the Registry and update their data to ensure that their do-not-call lists are up-to-date.

14. NASUCA’s Registry Comments (at 5) noted that updating call lists quarterly is insufficient to ensure the effectiveness of the Registry. The Commission will apparently update the Registry at least monthly. Telemarketers should be required to access the Registry and update their do-not-call lists on a monthly basis.

**Registry Access Should Be for the Limited Purpose of Updating Call Lists.**

15. The *Notice* asks whether there would be a need for an entity other than a telemarketer to access the Registry.<sup>18</sup> The Commission states that it “anticipates providing appropriate law enforcement access to the national registry.”<sup>19</sup> The

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<sup>15</sup> *Id.* at 37363.

<sup>16</sup> *Id.* at 37364.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.* at 37368.

<sup>19</sup> *Id.*

Commission does not explain the term “appropriate law enforcement” in this *Notice*.

However, in the *Privacy Act Notice* issued in this docket on March 1, 2002, the

Commission noted that disclosure of the records may be made for “routine uses” that

include, but are not limited to, the use of records, where appropriate, in law enforcement investigations or proceedings conducted by the Commission or other agencies or authorities (e.g., to determine whether a telemarketer is complying with the do-not-call provisions of the FTC’s Telemarketing Sales Rule), as well as other regulatory or compliance matters or proceedings.<sup>20</sup>

Such other uses are described in Appendix I to the notice regarding the Commission’s system of records pertaining to Privacy Act requests and appeals.<sup>21</sup>

16. NASUCA opposes the use of the Registry for any purpose other than to stop unwanted telemarketing calls. As the Commission has noted, the purpose of the Telemarketing Consumer Fraud and Abuse Prevention Act – which prompted the proposal to develop the Registry – is “to combat telemarketing fraud by providing law enforcement agencies with powerful new tools, and to give consumers new protections.”<sup>22</sup> In order to avoid unwanted calls and abusive telemarketing practices, consumers will be providing the Commission with personal information, some of which may be considered “private” (e.g., unlisted telephone numbers). Disclosure of the information for any purpose other than the prevention of unwanted telemarketing calls would undermine the purpose of – and consumers’ confidence in – the Registry.

17. Disclosure to law enforcement agencies should be limited to those agencies that are investigating telemarketing complaints filed by a consumer or a group of consumers or that have obtained a subpoena for the information. Even then, only the

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<sup>20</sup> 67 Fed. Reg. 8985, 8986 (February 27, 2002) (footnote omitted).

<sup>21</sup> 57 Fed. Reg. 45678, 45706 (October 2, 1992).

<sup>22</sup> *Notice of Proposed Rule Making*, 67 Fed. Reg. 4492 (January 30, 2002) at 4492.

information that is absolutely necessary for the law enforcement agency's purpose should be given. It is difficult to imagine that information sought by a law enforcement agency could not be more readily obtained elsewhere.

**Conclusion.**

18. NASUCA urges the Commission to adopt the recommendations discussed above.

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June 28, 2002