NATIONAL ASSOCIATION OF REALTORS®

The Voice For Real Estate®

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REGULATORY & INDUSTRY RELATIONS

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Federal Trade Commission
Office of the Secretary
Room H-159 (Annex K)
600 Pennsylvania Ave, N.W.
Washington, D.C. 20580

Re: TSR Fee Rule, Project No. P034305, 70 *Federal Register 77*, 20848-20852 (April 22, 2005)

Dear Sir or Madam:

The NATIONAL ASSOCIATION OF REALTORS® (NAR) appreciates this opportunity to comment on the Federal Trade Commission's (FTC) proposed amendments to the Telemarketing Sales Rule (TSR) to revise fees charged to entities accessing the National Do-Not-Call Registry (Registry). The NAR is America's largest trade-membership association representing 1.2 million members, including NAR's institutes, societies and councils, involved in all aspects of the residential and commercial real estate industries, and therefore has a significant interest in the outcome of this rulemaking process.

NAR respects the Commission's obligations to implement and enforce the amended TSR, which, *inner alia*, established the National Do-Not-Call Registry. However, we believe the proposed fee increase, financially penalizes small business owners, such as real estate professionals, and undermines their economic contribution to the marketplace.

Currently five or fewer area codes are provided free of charge and each additional area code above five costs the seller $40.00. The FTC has indicated that it anticipates many small businesses will be able to access the national registry without having to pay any annual fee. The Commission concluded, "[i]t is unlikely that there will be a significant burden on small businesses resulting from the adoption of the proposed revised fees."[1]

NAR has and continues to maintain that the FTC's pricing structure assumes a direct relationship between the number of area codes required and the number of calls made to each area code. However, this is not always the case. In today's increasingly interconnected world, a business may be small in size (number of employees, receipts, assets, etc.) but not be limited to a small geographic market area.

Consequently, many small businesses, including real estate agents and brokers, often have the need to call a limited number of consumers who reside in a variety of states and/or area codes beyond their primary five area code local calling region. This is

[1] 70 Federal Register 77, 20851 (April 22, 2005).

especially the case for REALTOR®-owned small businesses in resort communities. It is common for these small businesses to find themselves forced to pay for access to a number of additional area codes in order to research a single phone number in each area code. This is the case while, at the same time, a large company who relies heavily on telemarketing, and makes thousands of calls to consumers but limits these calls to within the five-code area, does not have to pay a fee.

Furthermore, given the recent clarification by the Federal Communications Commission (FCC) regarding real estate professionals contacting for-sale-by-owners (FSBOs) and expired listings, many more calls made by real estate brokers and agents may now be considered a "solicitation" and therefore subject to the proposed revised fee provisions. To that extent, any revision to the Telemarketing Sales Rule would have a significant economic impact on a substantial number of our 1.2 million members, the overwhelming majority of which are small businesses.

It is apparent from the NPRM that the Commission may consider other options with regard to the national registry pricing structure, none of which we believe address our concerns about the inequities imposed on small businesses. One such option which is mentioned in the NPRM is the elimination of area codes for which there is no charge. NAR would strongly oppose such an option and would oppose any reduction of the number of currently free area codes.

We appreciate that the Commission has considered providing small businesses with free access to the registry – a position long maintained by the NAR. We do, however, disagree with the Commission that such an exemption for small businesses, "would not balance the private and public interests at state any more equitably or reasonable than the approach currently proposed by the Commission."[2]

As you are most likely aware, small businesses represent 99 percent of American companies. Yet despite their importance to the economy, small businesses are burdened disproportionately by the costs of government regulations such as the Do-Not-Call/Do-Not Fax rules, CAN SPAM rules and FACT Act regulations. According to the Small Business Administration's Office of Advocacy, very small firms with fewer than 20 employees, such as REALTOR-owned small businesses, spend 60 percent more per employee then larger firms to comply with federal regulations. The NAR asks the Commission take into consideration the recent regulatory compliance burdens that REALTOR®-owned small businesses are still adjusting to and ease the burden of a fee increase so as to not cause further financial harm to America's small firms.

[2] 70 Federal Register 77, 20851- 20852 (April 22, 2005).

Conclusion

In light of the above, the NAR respectfully requests the FTC reconsider the fee increase and offer an alternative access fee structure solution that would provide the appropriate relief for small businesses. Furthermore, we reiterate our position that the elimination or reduction in the current number of free area codes would impose a significant financial burden on our 1.2 million members, while not necessarily contributing to objectives of the Telemarketing Act and the Implementation Act.

Thank you for the opportunity to present the views of the NATIONAL ASSOCIATION OF REALTORS®.

Sincerely,

Joseph M. Ventrone
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Regulatory and Industry Relations