

BEFORE THE
FEDERAL TRADE COMMISSION
WASHINGTON, DC 20580



In the Matter of)
)
Telemarketing Review -- Comment) FTC File No. P994414
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**COMMENTS OF THE
NEWSPAPER ASSOCIATION OF AMERICA**

The Newspaper Association of America (“NAA”) hereby submits comments in response to the Commission’s *Notice of Inquiry* on its Telemarketing Sales Rule.¹ NAA is a nonprofit organization representing the \$57 billion newspaper industry and more than 2,000 newspapers in the U.S. and Canada. Most NAA members are daily newspapers, accounting for 87 percent of the U.S. daily circulation.

I. Introduction

Five years ago, NAA was an active participant in the Commission’s adoption of its Telemarketing Sales Rule (“TSR”).² We appreciate the opportunity to participate again as the FTC begins its mandated five-year review of this regulation. While the Commission has yet to propose any changes to the TSR, the newspaper industry believes that further regulations are unnecessary and -- in certain situations -- regulations should be relaxed.

The newspaper industry views on the TSR are centered on the principle that newspapers, as local businesses, depend on a good relationship with their readers. We believe the TSR in general is sound public policy and good for business. Telemarketing continues to play an important role in a newspaper's ability to retain and attract local

¹ Request for Comments, 65 Fed. Reg. 10428 (February 28, 2000).

² See Comments of the Newspaper Association of America, FTC File No. R4110801, at 1 (March 31, 1995 and June 30, 1995).

subscribers and advertisers. Forty percent of all new subscriptions come from telemarketing. Further, telemarketing also is routinely used by many newspapers to alert subscribers that their subscriptions are about to expire in order to give them the opportunity to renew. In addition, many newspapers use telemarketing to offer classified advertising services to both subscribers and non-subscribers.

II. Is the Telemarketing Sales Rule Necessary?

NAA believes that regulations prohibiting fraudulent and deceptive telemarketing practices are necessary. Not only does the TSR protect consumers, but also it assists in maintaining the integrity of those companies who use telemarketing as an integral part of their business models. We believe that the focus of the regulations and the FTC should be squarely aimed at those telemarketing companies that intentionally engage in fraudulent and deceptive telemarketing practices, not at legitimate companies who inadvertently commit a breach of these complex regulations.

III. Do-Not-Call List Requirements

In the NOI, the FTC asked what are the advantages and disadvantages of the do-not-call provisions to the industry. This question elicited the most comments from our members. Newspapers recognize the advantages of company do-not-call lists. Newspapers, like other local businesses, do not want to call individuals who do not want to be called – it's not good business. However, allowing at least one call into a residential customer is good public policy, as it would balance the needs of local businesses, such as newspapers, with the interests of residents.

A. A National Do-Not-Call List is Inappropriate

As is presently the case, we strongly believe that do-not-call lists should continue to be company specific. At the January 11, 2000 public forum sponsored by the FTC, the concept of a national do-not-call list was discussed and debated. We believe that any proposal to create a national do-not-call list would negatively affect the newspaper industry. Individuals and families are constantly moving around the United States. Newspapers are a valuable resource to new residents, and many of them expect calls from

local newspapers when they move into a new area. The creation of a national do-not-call list would hamper a newspaper's ability to offer new residents a valuable service and product.

In addition, the concept of a national do-not-call list runs counter to the purposes for the enactment of the Telemarketing Consumer Fraud & Abuse Prevention Act³ (TCFAPA) and the Telephone Consumer Protection Act⁴ (TCPA). The TCFAPA and the subsequent TSR were enacted and adopted to combat fraud and deceptive telemarketing practices. The TCPA directs the FCC, among other things, to protect residential telephone subscriber privacy rights. However, in implementing the TCPA, the FCC recognized that businesses should be allowed to make at least one call to a residential customer. We believe that a national do-not-call list does nothing to combat fraud and deceptive telemarketing practices and would upset the balance the FCC has struck between legitimate telemarketing practices and telephone subscriber privacy rights.

While a few states have adopted statewide do-not-call lists, newspapers have opposed these efforts or have sought and obtained an exemption from the requirement because of the local nature of their business.

B. Ten-year Requirement to Maintain Do-Not-Call Lists is Unreasonable and Too Long

While not a requirement of the TSR, the maintenance of company-specific do-not-call lists for 10 years, as required by TCPA, is proving to be detrimental to our efforts to reach out to local customers. As Americans move with increased frequency, whether it is within the same state or clear across the country, they are changing their telephone numbers with the same frequency. In Houston, Texas, for example, 17 percent of all Houstonians move during any given year. The changed phone numbers usually are not forwarded to newspapers or other businesses that use telemarketing. Therefore, with increasing frequency, the telephone numbers on our lists are no longer associated with the person who requested placement on the do-not-call list. The practice of maintaining

³ 15 U.S.C. § 601 *et seq.*

⁴ 47 U.S.C. § 64.1200 *et seq.*

these lists for 10 years, when such lists often become outdated within a much shorter period of time, is unreasonable for legitimate telemarketing practices.

Further, the administrative overhead in maintaining these lists is taxing many newspapers. For instance, after eight years of complying with the TCPA, one mid-size newspaper's do-not-call list is fast approaching 100,000. Such large and diverse databases must be maintained and updated constantly to ensure accuracy.

Given the change over in telephone numbers, NAA believes a three-year requirement for maintaining a do-not-call list is a more appropriate and reasonable timeframe for companies.

C. Third Party Created Do-Not-Call Lists Should Not be Mandated


NAA would like to take this opportunity to urge the FTC to resist any efforts to mandate companies that use telemarketing practices to accept third-party do-not-call lists. Newspapers have been approached by certain companies claiming to represent individuals who want to be placed on do-not-call lists. We believe that neither the TSR nor the TCPA require companies to accept such lists. In fact, NAA sought clarification from the FCC on whether the TCPA compels telemarketers by force of law to honor such lists of phone numbers. The FCC issued a letter clarifying that the TCPA does not compel a telemarketer to add lists of consumer numbers, compiled by third parties, to a company's do-not-call list.

These third-party compilers assert that if a company fails to incorporate these lists into the company's specific do-not-call list, the company would violate the TCPA and be subject to fines. NAA argues that not only is the authenticity of such lists questionable, but also compelling companies to accept these types of lists runs counter to the FCC's regulation of company-specific lists. Further, if mandated, such a requirement would place an unreasonable administrative burden on newspapers that would be forced to check the veracity of the countless lists that may be developed. While individual companies are not precluded from accepting such lists, the TCPA does not mandate that they be incorporated. The FTC should adopt a similar position.

IV. Conclusion

As the FTC moves ahead with its review, we urge the Commission to resist any efforts that will disrupt legitimate telemarketing practices that have proven essential to sustaining the daily operations of the nation's newspapers.

Respectfully Submitted,

A handwritten signature in cursive script, reading "David S.J. Brown", is written over a horizontal line.

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May 30, 2000