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VISA
WORLDWIDE PARTNER

May 1, 2003

FEDERAL TRADE COMMISSION
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Federal Trade Commission
Office of the Secretary
Room 159
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580
Attn: FTC File No. R411001

Re: Telemarketing Rulemaking—Revised Fee NPRM Comment:
FTC File No. R411001.

Ladies and Gentlemen:

This comment letter is submitted on behalf of Visa U.S.A. in response to the Federal Trade Commission's ("FTC") request for public comment on its revised notice to amend the Telemarketing Sales Rule ("Proposed Rule") to impose user fees on sellers for their access to a national do-not-call registry ("registry").

Visa supports the FTC's overall simplification of the contemplated user fee structure for entities accessing the registry. As discussed in the supplemental information accompanying the Proposed Rule ("Supplemental Information"), the simplified user fee structure should avoid requiring sellers or telemarketers to make multiple payments to access the very same information.

While the overall proposed fee structure has been improved, there are two significant problems under the Proposed Rule. First, proposed section 310.8 states that it is "a violation of this Rule for any seller to initiate, or cause any telemarketer to initiate, an outbound telephone call to any person whose telephone number is within a given area code unless such seller first has paid the annual fee . . . for access to telephone numbers within that area code that are included in the national do-not-call registry." The Proposed Rule is inconsistent with section 310.4(b)(1)(iii)(B)(ii) of the Telemarketing Sales Rule, which specifically exempts outbound calls to a person that has an "established business relationship" with a seller. While the Supplemental Information, as well as the headings used in the proposed text, reference a fee for "accessing" the registry, the specific language proposed under section 310.8 would require a seller to pay a fee for calling existing customers with whom the seller has an established business

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relationship, even if the seller never accesses the registry. Pursuant to the exemption under section 310.4 of the Telemarketing Sales Rule, a seller is not required to access the registry prior to calling existing customers; in this regard, a seller that does not access the registry receives no benefit from the registry and, therefore, should not be required to pay a user fee to implement or maintain the registry. Thus, Visa recommends that the FTC clarify in the final rule that if a seller is not required to access the registry pursuant to an exemption or otherwise, the seller should not be required to pay a user fee provided the seller does not access the registry for other reasons.

Second, the Proposed Rule would treat "distinct corporate divisions of a single corporation" as well as an affiliated corporation as separate sellers for the purpose of the rule. As a result, affiliates, subsidiaries, and even distinct divisions of the same company would be considered separate sellers under the Proposed Rule and, thereby, required to pay a separate annual fee for access to the same information. Moreover, the standard for determining distinct divisions is far from clear. Under the Proposed Rule, businesses with differentiated organizational structures, whether through divisions or separate entities, would pay higher fees than those with undifferentiated structures. The FTC bases this user fee structure on the assumption that such companies are larger and, therefore, presumably would place more calls to individuals who have placed their names on the list. The assumption on which the Proposed Rule appears to be based upon is unwarranted. While Visa understands the FTC's desire to reduce the burden on smaller institutions, the Proposed Rule should not penalize certain corporate structures. Accordingly, we recommend that the FTC impose the same user fees on all businesses regardless of their corporate structure; if the FTC wishes to incorporate into the fee structure a lower fee for smaller telemarketers, it should do so based on a certified lower volume of telemarketing calls.

Once again, we appreciate the opportunity to comment on this important matter. If you have any questions concerning these comments, or if we may otherwise be of assistance in connection with this matter, please do not hesitate to contact me at (415) 932-2178.

Sincerely,

Russell W. Schrader

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