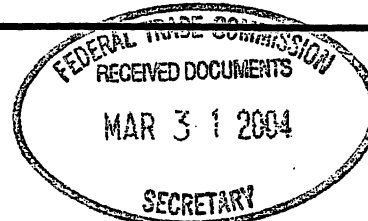




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March 31, 2004



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

Re: "CAN-SPAM Act Rulemaking, Project No. R411008," 69 Federal Register 48, 11775-11782 (March 11, 2004)

Dear Sir or Madam:

The National Multi Housing Council and the National Apartment Association are pleased to submit comments in response to the Federal Trade Commission's (FTC) Advance Notice of Proposed Rulemaking on various topics related to the CAN-SPAM Act of 2003.

The National Multi Housing Council (NMHC) and the National Apartment Association (NAA) represent the nation's leading firms participating in the multifamily rental housing industry. Our combined memberships are engaged in all aspects of the apartment industry, including ownership, development, management, and finance. The National Multi Housing Council represents the principal officers of the apartment industry's largest and most prominent firms. The National Apartment Association is the largest national federation of state and local apartment associations. NAA is comprised of 164 affiliates and represents more than 30,000 professionals who own and manage more than 4.9 million apartments. NMHC and NAA jointly operate a federal legislative program and provide a unified voice for the private apartment industry.

Our comments are limited to issues associated with the proposed National Do-Not-E-mail Registry.

NMHC/NAA support the primary goal of the CAN-SPAM Act, which is to curtail the abusive, deceptive and fraudulent practices of spammers and the corresponding harm to consumers and our economy in general. The Act goes a long way toward addressing those concerns and has established a national standard to which all senders of commercial e-mail must comply.

Congress directed the FTC to write a report setting forth a plan and timetable for establishing a nationwide marketing Do Not E-mail Registry. Among other things, the Commission is required to address in its report the practical and technological feasibility of such a Registry. In addition, the FTC must examine the issues of security, privacy, and enforceability of a Registry and how it would operate with respect to children's e-mail accounts. NMHC/NAA have identified several areas of concern relating to the creation and implementation of a national Do Not E-mail Registry.

The American apartment industry...working together for quality, accessible, affordable housing.

Cost of a National Registry

There is obviously a cost associated with the creation of a Do Not E-mail Registry. The cost of the Do Not Call Registry was approximately \$18 million dollars. It is assumed a fee structure would be established to defray these costs. These costs may unfairly disadvantage small businesses that today responsibly use e-mail as part of their daily business communication and marketing tools.

The Commission should look to the experiences of the Do Not Call Registry to ascertain whether or not the creation of yet another registry is viable right now. The Do Not Call Registry has been in effect for 6 months. It is our opinion that it is far too early to move forward with another registry prior to a full evaluation of what is already in place. The Commission should move incrementally in this regard rather than attempting to put something in place that later will yield unintended consequences and at a high price.

Organizing, operating, and accessing a national Do Not E-Mail Registry is infeasible.

It is nearly impossible to envision how the e-mail addresses contained in a national Do Not E-mail Registry might be organized and made accessible to those "scrubbing" their e-mail lists against the Registry. Consider these facts: there are potentially millions of e-mail addresses currently in use; many consumers have multiple e-mail addresses; the assignment of e-mail addresses is not uniform or standard; and consumers frequently change their e-mail addresses. Given this dynamic nature, it is difficult to understand how the Commission is capable of creating a means by which registered e-mail addresses would be organized that would permit scrubbing. When scrubbing their call lists against the national Do Not Call Registry, telemarketers may download information by area code. The proposed Do Not E-mail Registry would not have a comparable organizing method. Given the substantial technological obstacles to creating, operating, and accessing such a Registry, it seems that the burdens to e-mail senders would significantly outweigh the potential benefits to consumers.

Apartment operators and their associations must maintain the ability to communicate via e-mail.

E-mail is an essential tool through which apartment industry professionals communicate with residents, prospective residents, suppliers, and others. In many instances, the ability of an apartment operator to lease apartments is dependent upon the ability to utilize e-mail. For example, apartment properties routinely receive e-mail inquiries regarding the availability of an apartment home or the rent charged for an apartment. A prospective resident who sends such an e-mail justifiably expects to receive a prompt reply via e-mail. Not only is an e-mail response a fast and efficient way to conduct these communications, it may be the only way. A prospective resident who contacts an apartment property via e-mail, or who supplies only an e-mail address to the apartment community's web site seeking information, may not have provided an alternative means for the apartment operator to make contact.

In addition, as membership organizations, NMHC/NAA depend upon the use of e-mail to quickly communicate important information to our members. In fact, our members expect to receive information via e-mail as a benefit of membership. Not only

do we send important informational messages to our members and respond to individual e-mail inquiries seeking advice or information, we regularly notify our members about critical legislative or regulatory news that must be transmitted and acted upon immediately. Not only are we concerned that a national Do Not E-mail Registry would interfere with our members' ability to conduct business, we are concerned that a Registry would interfere with our ability to communicate with our members. We believe that the proposed Registry would place unnecessary financial and operational burdens on the backs of businesses that are responsible users of e-mail

The national standard for commercial e-mails created by the CAN-SPAM Act will address many of the problems associated with spam. The ability for a consumer to opt out of receiving further commercial e-mail messages and the obligation for the sender to honor that request will go a long way toward eliminating unwanted commercial e-mail. We urge the Commission to allow this new standard time to take hold before it creates additional regulations to tackle a problem that may be significantly addressed by existing standards.

Conclusion

It is premature at this time to move forward with the creation of a National Do Not E-mail Registry. There are too many unanswered questions about the effectiveness of such a Registry to combat the abusive practices of spammers, and we do not yet know the extent to which existing standards will combat the problem of unwanted commercial e-mail. The creation of a Registry is certain to be costly, unruly and potentially unenforceable. Until there is ample evidence of consumer benefit from such a Registry, as well as the technological feasibility of organizing and accessing a Registry, businesses should not be restricted from sending legitimate communications to consumers. For the reasons stated above, NMHC/NAA urge the Commission to advise against the creation of a National Do Not E-Mail Registry.

NMHC/NAA thank you for the opportunity to present our views and we and look forward to offering additional thoughts on other provisions of the CAN-SPAM Act currently under your review.

Sincerely,



Jeanne McGlynn Delgado
Vice President, Property Management



Elizabeth Feigin Befus
Senior Legislative Analyst