



National Energy Marketers Association

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL TRADE COMMISSION

Telemarketing Rulemaking - User Fee)

FTC File No. R411001

COMMENTS OF THE NATIONAL ENERGY MARKETERS ASSOCIATION

The National Energy Marketers Association (NEM) hereby submits comments pursuant to the May 29, 2002, Federal Register Notice, on the Commission's proposal to charge user fees to telemarketers that access the proposed do-not-call (DNC) registry. NEM recommends that the user fee should properly be assessed to consumers that desire to be included in the registry and who will derive the perceived benefit. However, if the Commission determines to assess the user fee against energy marketers and telemarketers acting on their behalf, NEM requests clarification of the implementation of the user fee exemption and cap. NEM urges that the national registry user fee not be assessed in a duplicative fashion with state registry user fees. NEM also supports providing list scrubbers with access to the national registry.

NEM previously filed comments, for which it affirms its support, urging the Commission not to apply the national DNC provisions in its January 30, 2002, NOPR to the competitive energy market and recommending that the matter of energy consumer enrollment should be a matter of state and local jurisdiction. NEM also previously recommended that the Commission conform its authorization and related recordkeeping requirements to the "Uniform Business Practices for Retail Energy Markets." Finally, NEM urged the Commission not to construe the proposed prohibition from providing third parties with customer billing information to bar utilities from providing competitive energy suppliers, and the telemarketers acting on their behalf, with access to customer lists.

The National Energy Marketers Association (NEM) is a national, non-profit trade association representing wholesale and retail marketers of energy, telecom and financial-

related products, services, information and related technologies throughout the United States, Canada and the U.K. NEM's Membership includes wholesale and retail suppliers of electricity and natural gas, independent power producers, suppliers of distributed generation, energy brokers, power traders, and electronic trading exchanges, advanced metering and load management firms, billing and information technology providers, credit, risk management and financial services firms, software developers, clean coal technology firms as well as energy-related telecom, broadband and internet companies.

This regionally diverse, broad-based coalition of energy and technology firms has come together under NEM's auspices to forge consensus and to help resolve as many issues as possible that would delay competition. NEM members urge lawmakers and regulators to implement:

- Laws and regulations that open markets for natural gas, electricity and related products, services, information and technology in a competitively neutral fashion;
- Rates, tariffs, taxes and operating procedures that unbundle competitive services from monopoly services and encourage true competition on the basis of price, quality of service and provision of value-added services;
- Competitively neutral standards of conduct that protect all market participants;
- Accounting and disclosure standards to promote the proper valuation of energy assets, equity securities and forward energy contracts, including derivatives; and
- Policies that encourage investments in new technologies, including the integration of energy, telecommunications and Internet services to lower the cost of energy and related services.

I. The User Fee Should Properly Be Assessed to Consumers for Whom the National Registry is Perceived to Be a "Thing of Value"

NEM urges the Commission not to impose the user fee on competitive energy marketers and the telemarketers acting on their behalf. The Commission reasons that it is appropriate to assess the user fee on telemarketers because the proposed DNC registry will be a "thing of value" to them under the User Fee Statute. NEM submits that the DNC registry is more appropriately characterized as a "thing of value" to consumers. The Commission discounts this fact by stating that, "while registering their telephone number may be perceived as a benefit to consumers, at this time the Commission does

not believe that it would be appropriate to charge consumers." (emphasis added). If the registering of phone numbers only may be a benefit to consumers, then NEM questions what the overall purpose of the DNC NOPR is in the first instance. Access to the registry will become a necessity of doing business precipitated by consumers' participation. As such the registry is actually a "thing of value" to consumers and they should pay the user fee for implementation and maintenance of the list compiled for their benefit.

The Commission notes that the, "primary operational cost to the Commission for the proposed national registry, once the basic database infrastructure is in place, would be each toll-free call consumers make to register their telephone numbers with the system. Thus, system costs increase with each additional registrant." This statement raises two issues. It is unclear why it is necessary to utilize a toll free number to receive consumer calls. Inasmuch as the DNC registry would be instituted for the sake of consumers, if they desire to be added to the list they should bear the cost of the phone call. This would presumably then lower the "primary operational cost" of the registry. Furthermore, NEM questions why system costs will increase with each additional registrant. Once the database infrastructure is instituted, the major on-going system task will be to enter new names. This is a data entry function the cost of which should remain relatively constant.

II. Application of the User Fee Exemption and Cap Should Be Clarified

The Commission proposes to assess a user fee of \$12 per year for each area code of data that a telemarketer uses. An exemption from the fee is proposed, "for firms to obtain data from only one to five area codes." The maximum annual fee is proposed to be capped at \$3,000. NEM requests clarification on what basis the exemption and cap would be imposed. It is unclear whether the five area code exemption would be applicable for each client for which a telemarketer is accessing information or if it would be a one-time exemption to the telemarketer. It is also unclear if the cap would be measured based on each client of a telemarketer or if it would be a singular cap applicable to all of a telemarketer's area code access requests regardless of the number of clients. NEM submits that this matter is an important factor in determining the cost burden of the user fee to telemarketers. NEM recommends that the five area code exemption be applied per client served by a telemarketer. NEM further recommends that if the cap is to be measured on a per client served basis that it is appropriate to lower the cap.

III. National and State Registry User Fees Should Be Coordinated So as Not to Be Duplicative and Overly Burdensome

The Commission notes that it, "is aware of other State statutes and regulations that implement State do-not-call registries, and is considering the interplay between the State and proposed federal registries as part of the Rule NPR." NEM asserts that an important consideration in the assessment of a user fee for the national registry is the assessment of a fee for access to state registries. For instance, New York charges a fee of \$500 per year for access to their entire list with quarterly updates.¹ NEM submits that if a user fee for the national registry is imposed it must not be imposed in a duplicative fashion concurrent with state user fees. This would be unduly burdensome and unfair and negatively effect the ability of competitive energy marketers and the telemarketers acting on their behalf to do business.

IV. List Scrubber Access to the Registry

The Commission questions whether list scrubbers should be given access to the national registry. The Commission also proposes that, "any telemarketer who engages in telemarketing or 'list scrubbing' on behalf of its clients will be required to pay the user fee . . . on behalf of each such entity." NEM submits that list scrubbers should be given access to the national registry as they perform a valuable service for telemarketers and will facilitate telemarketers compliance with the proposed DNC registry requirement. Moreover, NEM submits that it is imperative that these entities not be charged twice to use the same information. If a telemarketer utilizes the services of a list scrubber, they should not both be made to pay for the same information to avoid contacting the same consumers. This would unfairly raise the cost of doing business for telemarketers and the clients they serve.

V. Conclusion

For the foregoing reasons, NEM urges the Commission to assess the user fee against consumers for whom the national registry is perceived to be a "thing of value." If the user fee is assessed against energy marketers and telemarketers acting on their behalf,

¹ New York State Consumer Protection Board, Telemarketer's Information, Application for Registration, and Database Access, available at <https://www.nynocall.com/solicitor.html>.

NEM requests clarification of the implementation of the user fee exemption and cap. NEM also urges that the national registry user fee not be assessed in a duplicative fashion with state registry user fees. Finally, NEM supports providing list scrubbers with access to the national registry.

Sincerely,

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