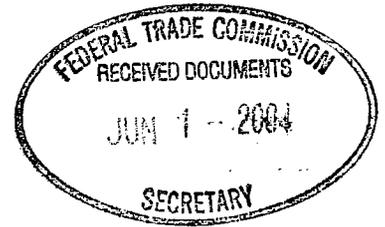




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**HAND DELIVERED**

**June 1, 2004**

***Before the***  
**Federal Trade Commission**

**Telemarketing Sales Rule (TSR)**

**Proposed Fee Rule**

**Project No. P034305**

**Comments of**

**Cendant Corporation**

Cendant Corporation ("Cendant") appreciates the opportunity to submit these comments on the Federal Trade Commission's ("FTC" or "Commission") Notice of Proposed Rulemaking amending the Telemarketing Sales Rule (TSR) to revise the fees charged to entities accessing the National Do Not Call (DNC) Registry.

**CENDANT OVERVIEW**

Cendant Corporation is a diversified global provider of business and consumer services within the hospitality, real estate, vehicle, financial and travel sectors.

Cendant's hospitality division is the world's leading franchisor of hotels through ownership of brand names that include Ramada®, Days Inn®, Howard Johnson®, Travelodge®, Knights Inn®, Super 8 Motel®, Wingate Inn®, Villager Lodge/Premier® and AmeriHost®, a leading operator of branded time share resorts (Fairfield®) and the world's leading time share exchange service (RCI®).

Cendant is also the leader in franchised residential real estate brokerage operations through its CENTURY 21®, Coldwell Banker®, Coldwell Banker Commercial®, Sotheby's International Realty® and ERA® brands, a leading residential mortgage company (Cendant Mortgage) and provider of employee relocation services (Cendant Mobility).

In vehicle services, Cendant owns and franchises the AVIS® and Budget® brands, some of the nation's largest car rental systems. Other Cendant subsidiaries provide vehicle fleet management services (PHH Arval and Wright Express).

The financial services division helps financial institutions enhance existing consumer products. Through Trilegiant Corporation Cendant is the premier membership-based provider of travel, shopping, health, entertainment, and consumer protection services. This division also includes JacksonHewitt, Inc., the second largest tax preparation franchisor and the Cendant Marketing Group.

Cendant provides services to the travel industry through its Galileo®, Wizcom reservations and global travel ticket distribution services as well as its on-line (Lodging.com and Cheaptickets.com) and off-line (Cendant and Cheap Tickets) travel agencies.

### **The Commission's Current Fee Formula and Proposed Fee Increase Unfairly Burdens Large Companies**

As an initial matter, Cendant has supported the creation and implementation of a national DNC list. We continue to believe that a national list is a step forward for consumers, some of whom do not wish to receive telemarketing calls at home, and for businesses that do not want to incur the expense of calling consumers who do not wish to receive calls. Cendant also acknowledges that there are tremendous costs associated with running an accessible, up to date and secure national DNC list.

Currently, according to the Commission's own numbers over 52,000 entities have accessed all or part of the national registry but only 6,000 (11.5%) entities have paid for access to the registry and only 1,100 entities (less than 2.1%) paid for access to the entire registry. The Commission's numbers are staggering, the current fee formula requires less than 12% of all businesses to pay for access to the national DNC list. Here the numbers suggest that approximately less than 3% of the telemarketers bear 97% of the total cost.

In addition, the Commission has proposed increasing the annual fee from \$25.00 to \$45.00 for each area code of data accessed. The maximum amount that any entity would be charged for access to 280 area codes of data would be raised from \$7,375 to \$12,375. The Commission is proposing this revised fee rule to raise \$18 million to offset fees in Fiscal-Year 2004. Under this fee proposal not only would 3% of the telemarketers continue to bear 97% of the total cost but they would bear the entire additional 78% proposed tax increase, while 92.6% of all entities who access the list receive it free of charge.

It is clear that the Commission's current fee structure and proposed fee increase will unnecessarily burden those companies that maximize the cap that is, larger

companies. In the alternative, we suggest that the imposition of a sliding fee scale would be a more equitable and balanced approach.

### **A Sliding Fee Scale Is an Equitable and Balance Approach For Those Companies That Access The Do-Not-Call List**

A sliding fee scale should be used to determine how much an entity could pay for subsidized access to the DNC list. In establishing a fee formula, the Commission should consider financial factors of the entity such as income or average annual receipts, or the Commission could consider the average number of employees per business unit accessing the DNC list. For example, if a small business has moderate income and/or a small number of employees they would be asked to pay less (or even a nominal charge) for access to the list than an entity with larger income and a greater number of employees. The sliding fee scale used by the Commission should be designed so that a business will not have to pay more than 2% of their income for access. These changes would reduce the number of exemptions to the fee Rule and increase the number of paying participants. Thus creating a more balanced requirement for access to the DNC list.

### **Small Businesses Will Not Be Adversely Or Disproportionately Affected By A New Fee Schedule**

All businesses large and small should have a reasonable expectation that there is an ongoing cost to create, manage and secure a national database and that cost should be carried by the majority of entities that access the list. It would be unreasonable to require all entities to contribute at the same rate however, at the very least a nominal cost should be assessed to small entities (including charities, and other organizations that are exempt from the rules but can obtain the entire list for free) to pay for their use in addition to help defray the ongoing cost. Clearly, small businesses should receive a significant discount but a nominal or minimum fee should be assessed. The Regulatory Flexibility Act provides that the Federal government should guard against unnecessary and burdensome demands and requirements that could cost small businesses a great deal of money with limited resources. Specifically, Section 2(a) (3) of Pub. L.96-354 provides in part that:

“(a) The Congress finds and declares that—

(1) [W]hen adopting regulations to protect the health, safety and economic welfare of the Nation, Federal agencies should seek to achieve statutory goals as effectively and efficiently as possible without imposing unnecessary burdens on the public...

(3) [U]niform Federal regulatory and reporting requirements have in numerous instances imposed unnecessary and disproportionately burdensome demands including legal, accounting and consulting costs upon small businesses, small organizations, and small governmental jurisdictions with limited resources...”

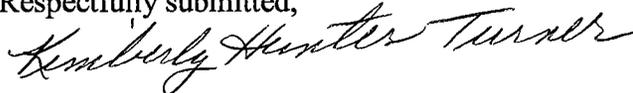
We agree with Congress that through the Regulatory Flexibility Act, agencies are charged with recognizing the difference in scale and resources of regulated entities and that it would be a mistake to treat all regulated businesses and organizations the same. However, we continue to believe that it is not appropriate to require less than 12% of the telemarketing industry to pay for the ongoing, implementation, operation, enforcement, infrastructure, educational efforts and administrative costs of a universal mandate. The imposition of a minimum or nominal fee (to the other 88% of entities accessing the list), one that is not onerous for access to a national registry would be appropriate.

## **Conclusion**

We believe that the national registry has proven to be a valuable resource used by all telemarketers. A fee scale will not create a barrier to access or reduce demand but it will ensure that all companies are treated in the same manner with regard to paying for access. To that end, Cendant urges the Commission to amend its current fee structure and implement reasonable guidelines for a sliding fee scale.

Thank you for considering our views.

Respectfully submitted,



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