June 1, 2004

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

Re: TSR Fee Rule, Project No. P034305

Ladies and Gentlemen:

The American Resort Development Association (ARDA) is the Washington, D.C. based trade association representing the vacation ownership industry. Established in 1969, ARDA today has over 800 members, ranging from small, privately held firms to publicly traded companies and international corporations. ARDA's diverse membership includes companies with vacation timeshare resorts, private residence clubs, land development, lot sales, second homes, and resort communities. However, the majority of ARDA's membership is related to the timeshare industry.

Although ARDA supported the establishment of and continues to support the National Do Not Call Registry (the "Registry") as a solution to the vast matrix of inconsistent state laws; sellers and telemarketers have lost a large segment of their potential customer base. This has resulted in an increase in the cost per sale of product. Sellers and telemarketers, whether they are small, local firms or large, nationwide companies, continue to pay for access to state registries, as not all states have adopted the Registry as their state's registry. These fees, where applicable, also add to a seller's and telemarketer's overall expenses. An increase in the cost to access the Registry would further increase the per-product cost, which must be passed on to the consumer and could result in further depletion of the available customer base. ARDA opposes any increase in the fee to access the Registry, particularly in light of the fact that states continue to require access to their separate lists. ARDA further opposes any increase that would continue the inequity in the payment structure or that the Commission has not demonstrated is necessary for the continued maintenance and enforcement of the Registry.

The Commission's proposed fee increase places an unreasonable burden upon the minority of telemarketers and sellers who are already paying for access to the Registry. According to the Commission's statistics in the NPRM[1], from September 2, 2003, through early March 2004, over 52,000 entities accessed all or part of the Registry. Of those, more than 45,500 entities accessed five or fewer area codes at no charge and 900 entities accessed some portion of the Registry at no charge under an exemption. That leaves 6,000 entities having paid for access, with approximately 1,100 paying for access to the entire Registry. These statistics evidence a clear disparity in the fee generation process. Rather than increase the fees to apply only to those few entities already paying, ARDA proposes some possible alternatives to the current process to strike a more even balance.

First, however, ARDA members ask whether the additional fees are necessary. Although the Commission points out that Congress authorized the Commission to collect $23.1 million in offsetting fees, and the proposed increased fee of $45 per area code would reap $18 million, the Commission provided no figures in the NPRM as to its expectations of future costs. The Commission delineates several categories, but does not place a dollar amount to those activities. Those entities paying for access are less likely to violate provisions of the TSR. However, those same entities are placed in the unfair position of having to pay upfront for other entities which are not accessing the Registry as required or possibly not accessing as much of the Registry as they should. Accordingly, the Commission should provide more detailed estimates of the projected costs associated with the Registry and how the current fees are being allocated to its various functions related to maintaining the Registry.

Second, if the Commission requires additional funds, there is a viable, untapped source of revenue. The Commission admits estimating that only 10,000 entities would be required to pay for access to the Registry.[2] While the actual number of paying entities is about sixty percent of that estimate, the number of entities accessing and downloading information from the Registry in total is five times greater. The percentage of entities paying any fee is only about twelve percent of all entities accessing the list. Twelve percent of sellers and telemarketers should not be funding all of the activities listed by the Commission in the NPRM. The Commission must impose

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[1] References to "NPRM" are to the Commission's Notice of Proposed Rulemaking published in the Federal Register on April 30, 2004.

[2] In its comments to the Revised Fee NPRM dated March 28, 2003, ARDA noted that the Commission's estimate of 7,500 entities accessing the Registry was probably too low.

fees more broadly. One solution, to which the Commission alludes in the NPRM, would be to decrease the number of free area codes or eliminate free access entirely.

The Commission continues to express concern about the potential negative effect of the imposition of access fees on small businesses. It is not likely that charging just a minimal fee would have even a measurable impact on these businesses. However, one gauge would be the extent of access to the Registry by businesses that access five or fewer area codes. Does the Commission have statistics showing how many of the entities accessing five area codes or less are accessing data for only one or two area codes? Truly small businesses may not be calling more than a single area code or a couple of area codes. Thus, one equitable solution would be to lower the number of free area codes to two or even one. This would not impose a significant cost on either the entities currently paying for any part of or the whole list or for those paying no fee, particularly if there is no increase in the fee per code. Small, local businesses will still be able to avoid the cost, albeit a minimal cost, for accessing an extremely small portion of the list.

An alternative would be to charge a fixed rate for the first five area codes. This rate could be at a discount from the per-area-code charge. For example, if the access fee is $25 per area code, the Commission could charge a flat fee of $100 for the first five area codes. Essentially, this is the same as providing one free area code to all entities accessing the Registry.

Taking this concept a step further, the fixed rate could be mandatory for accessing up to five area codes (i.e., $100 for one, two, etc.). Thus, if an entity only accesses one code, it would still be required to pay $100. While ARDA recognizes the necessity of not unnecessarily overburdening small businesses, all entities utilizing the list should pay something, even if it is a minimal administrative fee.[3] Further, this proposed method should address the Commission's concerns with regard to any additional processing costs associated with smaller fee payments by keeping the minimum fee at a measurable level.

An additional alternative simply would be to charge all entities accessing the registry the same fee per area code for every area code accessed as the Commission suggests. Thus, there would not be any

[3] ARDA, in its comments related to the Revised Fee NPRM, supported allowing all entities accessing the Registry five free area codes of data rather than just entities of a certain size. This is consistent with ARDA's request that the Commission maintain an equitable distribution of the burden to fund the Registry.

free area code access. The cost per area code would be equal for each code accessed, whether one or 280. However, the issue of how much to charge is open. The Commission calculates that by eliminating free access, the per-area code charge would be $32 with a maximum charge of $8,960.[4]

In any of the scenarios posed, it would be illogical and an additional burden on sellers and telemarketers for there to be any increase in cost per area code. The number of free area codes would be decreased or eliminated generating additional funds to cure any deficit. Accordingly, the current $25 per area code charge should be adequate for any of the Commission's funding needs. If the funds obtained from a reduction in the number of free area codes would be insufficient, ARDA requests that the Commission provide data showing the purported deficiency in funds and the allocation of costs required to support a further increase in the access fee before imposing any increase in the fee.

Third, if the Commission finds it necessary to raise additional funds, there should be a provision to reduce the fees as the Commission collects penalties for violations or as costs decrease from streamlining of processes. The Commission seeks to raise fees to fund law enforcement efforts and challenging alleged violators. These activities ultimately should be funded from the penalties imposed against violators. As the FTC collects these fines, it should be able to reassess the need for revenue from fees and decrease or certainly place a moratorium on increases in the fees for accessing the registry.

Similarly, as the Commission crosses the apex of the learning curve for operating the Registry, some costs should decrease. Much of the process is already automated, e.g. accessing and downloading the Registry from the Commission's Web site and accepting payments through electronic transfer. Many of the initial costs, like handling the registration of consumer numbers, will not be repeated at least to the extent that occurred during the months leading up to and immediately after the effective date of the Registry. As much as the Commission can further automate the process, and as much as these initial cost elements are absorbed, any cost savings should be passed along to Registry users as they are the primary source of direct funds for maintaining the Registry.

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[4] NPRM at 7, n. 7.

Thank you for the opportunity to present the views of the American Resort Development Association. We look forward to offering additional thoughts on the other provisions currently under review in this rulemaking process.

Sincerely,

Sandra Yartin DePoy
Vice President
Federal & Regulatory Affairs