

single copy of the list to maintain “a centralized scrub service that would be available to its affiliates. While this may reduce revenues somewhat, it would greatly increase compliance.”²⁴

The Commission is concerned that any such treatment of corporate divisions, subsidiaries, or affiliates could greatly diminish the number of entities that will pay for access to the national registry, provide an unfair advantage to larger, multi-divisional corporations, and potentially increase the fees required to be paid by smaller, less complex corporate entities. As a result, the Commission proposes to treat each separate division, subsidiary, or affiliate of a corporation as a separate seller for purposes of § 310.8. The Commission notes that such treatment will not diminish the effectiveness of corporate “centralized scrub services.” In effect, such centralized services can still be performed, provided that each corporate division, subsidiary, or affiliate has paid the appropriate fee for access to the national registry. It should be noted that divisions, subsidiaries, or affiliates of a seller that must pay for access to the national registry need not individually download the information in the registry on their own behalf. They need to pay only for the requisite access, and would be able to provide their unique account number to another division, subsidiary, or affiliate to perform the actual downloading of information and corporate list scrubbing. See section IV, below, for further discussion of the proposed operation of the fee collection system.

III. Calculation of Fees

A. Number of Entities Accessing the National Registry

To establish the appropriate fees to charge entities that access consumer telephone numbers included in the national registry, the Commission must first estimate the number of such entities that would be required to pay the proposed fee. As stated in the User Fee NPRM, this step is among the most difficult, given the dearth of information about the number of sellers currently in the marketplace who make outbound telemarketing calls to consumers.²⁵ In the User Fee NPRM, the Commission determined, after examining relevant industry literature and the record in this and past TSR rulemaking proceedings, that the most pertinent information for determining the number of firms that would be required to pay the proposed user fee would be the number of firms

that access state do-not-call registries. At that time, the most telemarketing firms that accessed any individual state registry was 2,932. Thus, in order to propose a realistic fee structure that would ensure sufficient funds would be collected to cover the costs of a national registry, the Commission estimated in the User Fee NPRM that 3,000 entities would pay for access to the information in the national registry.²⁶ The Commission sought comment and evidence to determine whether this estimate was realistic and appropriate.

Only one of the 34 comments received in response to the User Fee NPRM provided any information relevant to this inquiry.²⁷ That commenter, DialAmerica Marketing, Inc. (“DialAmerica”), stated that it has 700 clients for which it would have to obtain access to the entire national do-not-call registry.²⁸ In other words, DialAmerica’s client base would comprise over 23 percent of all entities that the Commission estimated would be required to access the national registry.²⁹ This information casts doubt on the original estimate. The Commission is therefore proposing a new estimate of the number of firms that will access the national registry, developed through a calculation using the limited information provided in the comments, combined with relevant industry-wide data that the Commission has been able to identify. This calculation makes a number of significant assumptions based on the best information available to the agency at this time. In Section X, below, the Commission asks specific questions about each of these assumptions, seeking information as to their reliability. The Commission asks commenters to provide any information they can about any and all of these

assumptions, including company-specific information and data that could help the agency to refine its estimates of the number of firms that will need to access the national registry.

Since scrubbing against the do-not-call registry is only required on outbound calls made to consumers,³⁰ the Commission begins its calculation with the assumption that DialAmerica has 700 clients for which it makes these types of calls. According to the Winterberry Group, DialAmerica has revenues of \$300 million per year, and outbound calls account for 90 percent of its call volume.³¹ Assuming that DialAmerica’s revenues per call are the same for inbound and outbound calls, its revenues from outbound calls would total \$270 million (90 percent of \$300 million).

According to Customer Inter@ction Solutions, 85 percent of DialAmerica’s business involves sales to consumers.³² If the Commission assumes that the 85 percent of DialAmerica’s business that involves sales to consumers is 90 percent outbound, consumer outbound sales calls would account for \$229.5 million in revenue (85 percent of \$270 million). If DialAmerica receives \$229.5 million in revenue from its 700 clients for whom it does outbound calling to consumers, this implies that the average revenue per client is about \$328,000 (\$229.5 million/700).

According to the Winterberry Group, total expenditures on teleservices were \$147.7 billion in 2000. Of this, 48.1 percent was spent on outbound calling, and 49.6 percent was spent on sales calls to consumers.³³ Assuming that the same percentage of expenditures on calls to businesses and calls to consumers are for outbound calls would imply that just under 24 percent of the total spent on teleservices is spent on outbound calls to consumers (48.1 percent × 49.6 percent = 23.9 percent).

Also, according to the Winterberry Group, total expenditures on third-party teleservices providers amounted to \$19.2 billion—13 percent of the \$147.7 billion total expenditures on such services—in 2000.³⁴ If the Commission

²⁶ The Commission previously had estimated, in the notice of amended application to the OMB under the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.*, that there were 40,000 telemarketing industry members affected by the TSR in the United States. See the Rule NPRM, 67 FR at 4534. As explained in the User Fee NPRM, the Commission does not believe that prior estimate is representative in the instant context. See User Fee NPRM at 37364, n. 7.

²⁷ The Commission also received some company-specific information from another commenter in response to the Rule NPRM. CDI-Rule NPRM at 1.

²⁸ DialAmerica—User Fee at 2. According to Customer Inter@ction Solutions, a monthly magazine of the teleservices industry, DialAmerica is the second-largest outbound teleservices agency in the United States. See <http://www.tmcnet.com/cis/0302/0302top50a.htm> (visited 4 February, 2003).

²⁹ Moreover, DialAmerica stated that its annual fees for obtaining access on behalf of all of its clients would result in that company alone paying for 70 percent of the total amount that was to be raised by the User Fee NPRM.

³⁰ See 16 CFR §§ 310.4(b)(1)(iii)(B); 310.6(b)(7).

³¹ Winterberry Group, Industry Map: Teleservice Industry—Multi-Channel Marketing Drives Universal Call Centers 16 (January 2001) (“Winterberry Group”). The Winterberry Group is a consulting firm that works with the direct marketing industry. See <http://www.winterberrygroup.com> (visited 25 March 2003).

³² Customer Inter@ction Solutions: Outsourcing, <http://www.tmcnet.com/cis/0302/0302top50a.htm> (visited 4 February, 2003).

³³ Winterberry Group at 2, 8, 9.

³⁴ *Id.* at 9.

²⁴ Wells Fargo—User Fee at 2.

²⁵ See User Fee NPRM at 37363–64.