

assumes that, as with overall expenditures on teleservices, roughly 24 percent of expenditures on third-party providers was for outbound calling to consumers, expenditures on third-party outbound calls to consumers would total \$4.59 billion (23.9 percent of \$19.2 billion).

If the Commission assumes that the DialAmerica figure of \$328,000 in revenues per client is representative of third-party providers of outbound calls to consumers in general, this would imply that there are approximately 14,000 such telemarketer-client relationships ($\$4.59 \text{ billion} / \$328,000 = 13,994$).³⁵

If the Commission assumes that the average firm that uses third-party service providers uses three different providers for different campaigns over the course of a year, there would only be about 4,650 firms using such third-party providers ($13,965 \text{ firms} / 3 = 4,655$), and the average firm that uses third-party telemarketers would spend an average of \$984,000 per year on outbound telemarketing to consumers ($\$328,000 \times 3$).

None of these figures accounts for firms that do their calling using their own staff and their own in-house equipment, which account for \$128.5 billion—87 percent of total expenditures—spent on teleservices.³⁶ Again assuming that roughly 24 percent of expenditures by companies using

their own resources to make calls are for outbound calling to consumers, total expenditures on these services would be \$30.71 billion (23.9 percent of \$128.5 billion). These firms are probably larger on average—and probably do more telemarketing—than the firms that use third-party service providers. If the Commission assumes that they spend, on average, five times as much as firms that use third-party telemarketers, they would be spending \$4.92 million per firm ($\$984,000 \times 5$). This would suggest that there are another 6,250 firms who do their own telemarketing ($\$30.71 \text{ billion} / \$4.92 \text{ million} = 6,242 \text{ firms}$).

In total, this would suggest that there are some 10,900 firms doing outbound calling to consumers—4,650 firms using third-party telemarketers, plus 6,250 doing their own calling. Of course, some of these firms would not be required to scrub against the FTC list because they are either engaged in charitable solicitations or are calling on behalf of an industry that is exempt from FTC regulation. Other firms that make only intrastate calls would likewise not need to obtain the list. The firms that only make intrastate calls are likely to be the smaller firms that tend to use third-party providers to make their calls.

If the Commission assumes that 40 percent of firms that use third-party providers and 25 percent of firms that do their own telemarketing are exempt from coverage,³⁷ approximately 2,800 firms that use third-party providers ($60 \text{ percent of } 4,655 = 2,793$) and 4,700 firms that do their own telemarketing ($75 \text{ percent of } 6,231 = 4,682$) would be required to access the national do-not-call registry. Thus, the total number of firms accessing the registry would be 7,500.

B. Amount of Information for Which an Entity Would Be Charged

In the User Fee NPRM, the Commission proposed a fee structure based on the number of different area codes of data that an entity wished to use annually.³⁸ The Commission proposed charging for access to the registry per area code because that charge most closely approximated the cost of operating the national registry. The Commission also determined that

many telemarketers and sellers engage in regional rather than nationwide calling campaigns, and therefore would not need consumer registration data for the entire nation.

A number of commenters that addressed this issue supported using area codes as a basis for assessing the fee.³⁹ In fact, SBA noted that the flexibility inherent in allowing entities to access the national registry by area code “would be beneficial to small businesses.”⁴⁰ On the other hand, other commenters suggested that imposing fees based on the number of area codes accessed, rather than imposing a flat fee, would create “unnecessary administrative complications.”⁴¹ However, the Commission has determined that it is not overly complex, from a system implementation prospective, to provide access to and collect fees for the national registry by area code. In fact, providing the entire national registry to every entity that seeks access, even if that entity will not need all of that information, would put a significantly larger strain on the resources necessary to deliver that information, resulting in an unnecessary increase in system costs. Another commenter stated that the “management of tracking user fees for area codes that each individual client calls for a sales campaign would be an extremely burdensome task for larger telemarketers.”⁴² The Commission acknowledges that charging for access to the national registry by area code may entail some complexity for large telemarketers. On balance, however, the Commission believes that the countervailing benefits of allowing access to the registry by area code outweigh any potential costs. As a result, the Commission continues to propose providing access to the national registry based on the number of area codes of information sought.⁴³

³⁹ See ARDA-User Fee at 4; NCL-User Fee at 1; AARP-User Fee at 2.

⁴⁰ SBA-User Fee at 4.

⁴¹ ABA-User Fee at 3. Accord Household-User Fee at 4; ITC-User Fee at 6; MBNA-User Fee at 2; TRA-User Fee at 3.

⁴² DialAmerica-User Fee at 2.

⁴³ One commenter requested clarification that if access to the entire registry is requested, the requestor will not have to input a list of all area codes. Household at 6. That is correct. An entity seeking access to the entire national registry will simply have to check a box indicating that preference, without having to list any area codes. In addition, the registry will offer the same access capabilities for the area codes within each state, so that entities will be able to select all area codes within a certain state simply by requesting access to information for that state.

³⁵ The only other comment providing any information of assistance in determining the number of entities that would pay a fee to access the national registry came from CDI. CDI stated that it specializes in outbound calling for daily and weekly newspapers ranging in size from 5,000 subscribers to over 1 million subscribers, makes calls on behalf of 140 different clients each month, and employs over 400 people. CDI-Rule NPRM at 1. Unlike DialAmerica, however, the Commission was unable to discover any information about CDI's revenues, making its company-specific information less useful in formulating assumptions regarding the number of industry members. However, by comparing CDI's 400 employees to the 11,000 people employed by DialAmerica (approximately 3.6 percent of the size of DialAmerica), and assuming that sales per employee are the same for the two firms, one might estimate CDI's revenues are around \$11 million (approximately 3.6 percent of DialAmerica's \$300 million in annual revenue). If CDI has revenues around \$11 million and calls on behalf of 140 clients during the entire year, their per-client revenues would be only about \$78,500 per year. (Of course, the fact that CDI calls on behalf of 140 clients each month does not mean that they have only 140 clients during the entire year. They may have different clients each month, which would make the revenue per client even lower.) If the figures for CDI are representative of a significant share of the telemarketing industry and if, as a result, the average revenue per firm is significantly lower than what DialAmerica realizes, the estimated number of telemarketer-client relationships would increase proportionally. This NPRM is specifically seeking information and comment about these figures from the industry.

³⁶ See Winterberry Group at 2.

³⁷ Firms that are exempt from coverage include those engaged only in intrastate telemarketing or in making solicitations to induce charitable contributions. See footnote 16, above. In addition, firms outside of the FTC's jurisdiction that make their own telemarketing calls, such as common carriers, banks, savings and loans, as well as companies that engage in the business of insurance, are also exempt from coverage and not included in our estimate of the number of firms that will have to access the national registry.

³⁸ See User Fee NPRM at 37364.