

permission to send fax ads must be in writing, include the recipient's signature, and clearly indicate the recipient's consent to receive such ads. In addition, we have clarified when fax broadcasters are liable for the transmission of unlawful fax advertisements.

164. We believe the rules the Commission adopts in the Order strike an appropriate balance between maximizing consumer privacy protections and avoiding imposing undue burdens on telemarketers. In addition, the Commission must comply with the Do-Not-Call Act, which requires the Commission to file an annual report to the House Committee on Energy and Commerce and the Senate Committee on Commerce, Science and Transportation. This report is to include: (1) An analysis of the effectiveness of the registry; (2) the number of consumers included on the registry; (3) the number of persons accessing the registry and the fees collected for such access; (4) a description of coordination with state do-not-call registries; and, lastly, (5) a description of coordination of the registry with the Commission's enforcement efforts.

B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

165. There were no comments filed in direct response to the IRFA. Some commenters, however, raised issues and questions about the impact the proposed rules and policies would have on small entities. Telemarketers maintained that "telemarketing is used to introduce consumers to novel and competitive products and services," often offered by small businesses. Some commenters insisted that business-to-business telemarketing is essential for small businesses. They indicated that they rely on fax broadcasting as a cost-effective form of advertising. On the other hand, other small businesses have requested that the Commission allow their telephone numbers to be included on any national do-not-call list and urged the Commission to adopt rules protecting them from unsolicited faxes. The rules adopted herein reflect not only the difficult balancing of individuals' privacy rights against the protections afforded commercial speech, but the difficult balancing of the interests of small businesses that rely on telemarketing against those that are harmed by unwanted telephone calls and facsimile transmissions. The amended rules should reduce burdens on both consumers and businesses, including small businesses.

166. *National Do-Not-Call List*. As discussed more extensively in the Order, some commenters opposed the adoption of a national do-not-call registry, stating that company-specific do-not-call lists adequately protect consumer privacy. Other commenters supported the establishment of a national do-not-call registry, arguing that "further regulation is needed because the current system does little or nothing to protect privacy in the home." See Privacy Rights Clearinghouse (Privacy Rights) at 2. National Federation of Independent Business (NFIB) "believes that significant burdens are being placed upon businesses of all sizes in order to comply with the regulations * * *, but that small businesses bear the brunt of those burdens." NFIB Comments at 1. NFIB suggested that women, minorities and small businesses will be affected disproportionately by any new restrictions. And, some commenters maintained that businesses, including small businesses, will suffer a reduction in telemarketing sales as a result of the establishment of a national do-not-call list. Small Business Survival Committee (SBSC), while opposed to a national do-not-call list, nevertheless offered a recommendation that would make such a list less onerous for small businesses. SBSC suggested exempting local calls that might result in a face-to-face transaction from the do-not-call list requirements. National Association of Insurance & Financial Advisors also encouraged exempting calls which result in face-to-face meetings and recommended an exemption for those businesses that make a *de minimis* number of calls.

167. The Commission received comments arguing that a national do-not-call list "would be cumbersome" and too expensive for small businesses to use. Direct Selling Association specifically indicated that a national do-not-call list would increase businesses' start-up costs if they were required to purchase the list. In addition, Mortgage Bankers Association of America (MBA) maintained that many small lenders use referrals from existing customers, not large lists, to attract new business. Such referrals, MBA suggested, will be difficult to scrub against a national do-not-call list. Some commenters suggested that an option to help reduce the cost of a national do-not-call list for small businesses would be to offer smaller pieces of the list to small businesses.

168. Yellow Pages Integrated Media Association urged the Commission to continue to exempt business-to-business calls from a national do-not-call list,

because small businesses benefit tremendously by advertising in yellow pages and on-line. However, other commenters requested that small businesses be allowed to include their telephone numbers on the national do-not-call list. One small business commenter stated that " * * * telemarketing * * * interferes with business operations, especially small business operations * * *." Mathemaesthetics, Inc. (Mathemaesthetics) Comments at 6. Another commenter argued that "people that work from home * * * should not have to be bothered with telemarketing calls that would impact their job performance and potentially their ability to make a living." David T. Piekarski Comments (Docket No. 03-62) at 1-2. Finally, some have assured the Commission that a national do-not-call list would be manageable and feasible to maintain. NCS Pearson, Inc. (NCS), for example, maintained that even extremely small telemarketers could gain access to the do-not-call list at a reasonable cost using the Internet.

169. *Web site or Toll-Free Number to Access Company-Specific Lists and to Confirm Requests*. The Commission sought comment on whether to consider any modifications that would allow consumers greater flexibility to register on company-specific do-not-call lists. We specifically asked whether companies should be required to provide a toll-free number and/or Web site that consumers can access to register their names on do-not-call lists. Some commenters argued that it would be costly if small, local businesses were required to design and maintain Web sites or provide toll-free numbers for consumers to make do-not-call requests. In addition, they maintained that businesses should not be required to confirm registration of a consumer's name on a company's do-not-call list. Confirmations by mail, they stated, would be expensive for a business and probably perceived by the consumer as "junk mail."

170. *Established Business Relationship*. One issue raised by commenters as particularly burdensome for small business was monitoring existing business relationships and do-not-call requests. NFIB stated that members have found requests by existing customers to cease contacting them "unwieldy and difficult * * * to translate as a business practice." NFIB Comments at 2. "An individual who continues to interact with a [sic] these small businesses following a 'do not contact' request does not sever the business relationship *de facto* * * *". NFIB Comments at 2. According to