

NFIB, it should be the right of the business to continue to call that customer. They argued that it should be the responsibility of the customer to terminate the relationship with that business affirmatively.

171. National Automobile Dealers Association (NADA) indicated that there has been no significant change that would warrant a revision of the established business relationship exemption. In fact, NADA stated that "narrowing the exemption would unnecessarily deprive small businesses of a cost-effective marketing opportunity." NADA Comments at 2. According to NADA, small businesses must maximize their marketing resources and the best way to do so is to direct their marketing efforts toward their existing customers.

172. While no commenter specifically addressed the effect of time limits on small businesses, several entities discussed time limits for the established business relationship rule in general. DMA indicated the difficulty in establishing a "clock" that "will apply across all the industries that use the phone to relate to their customers." DMA Comments at 20. DMA continued by stating "[d]ifferent business models require different periods of time." DMA Comments at 20. This concept was supported by Nextel, "the FTC's eighteen-month limit on its EBR rule would be inappropriate for the telecommunications industry" and would "dramatically increase administrative burdens and costs for all businesses as they would be forced to monitor and record every customer inquiry and purchasing pattern to ensure compliance with the FCC's rules." Nextel Reply Comments 12-13.

173. *Unsolicited Facsimile Advertising and "War Dialing"*. Privacy Rights commented that the practice of dialing large blocks of numbers to identify facsimile lines, *i.e.*, "war dialing," should be prohibited, especially because such calls cannot be characterized as telemarketing. It argued that "this practice is particularly troubling for small business owners who often work out of home offices" because it deprives the small business owner of the use of the equipment, creates an annoyance and interrupts business calls. Privacy Rights Comments at 4-5.

174. NFIB advocated on behalf of its small business members that "the ability to fax information to their established customers is an essential commercial tool." NFIB Comments at 3-4. Any customer who provides contact information when patronizing a business is providing express permission to be contacted by that

business, including via facsimile advertising. In addition, NFIB indicated that businesses engaged in facsimile advertising should not be required to identify themselves, and that customers should be required to notify the business that they do not wish to receive such faxes. NADA agreed that the Commission should "preserve its determination that a prior business relationship between a fax sender and recipient establishes the requisite consent to receive fax advertisements." NADA Comments at 2. According to NADA, changing these rules would deprive small businesses of a marketing tool upon which they have come to rely.

175. Other commenters disagreed, explaining that numerous small businesses are burdened by the intrusion of ringing telephones and fax machines, the receipt of advertisements in which they are not interested, the depletion of toner and paper, and the time spent dealing with these unwanted faxes. A few home-based businesses and other companies maintain that facsimile advertisements interfere with the receipt of faxes connected to their own business, and that the time spent collecting and sorting these faxes increases their labor costs. In fact, NFIB has received complaints from its own members "who * * * failed to realize that their membership *entitles* them to the receipt of such information via fax." NFIB Comments at 2 (emphasis added).

176. *Caller ID Requirements*. In response to the Commission's proposal to require telemarketers to transmit caller ID or prohibit the blocking of such information, NYSCPB favored prohibiting the intentional blocking of caller ID information, but acknowledged that requiring the transmission of caller ID may be inappropriate for smaller firms. NYSCPB stated that "[w]hile mandatory transmission of caller ID information would undoubtedly facilitate do-not-call enforcement * * * we would not want to impose onerous burdens on smaller, less technically sophisticated firms * * *." NYSCPB-Other Than National DNC List Comments at 9. In addition, NYSCPB suggested that smaller businesses that lack the capability to transmit caller ID be exempt from providing caller ID information until the business installs new equipment with caller ID capabilities.

C. Description and Estimate of the Number of Small Entities to Which the Rules Will Apply

177. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by

the rules adopted herein. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." 5 U.S.C. 601(6). In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. 5 U.S.C. 601(3) (incorporating by reference the definition of "small-business concern" in the Small Business Act, 15 U.S.C. 632). Under the Small Business Act, a "small business concern" is one that: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). 15 U.S.C. 632.

178. The Commission's rules on telephone solicitation and the use of autodialers, artificial or prerecorded messages and telephone facsimile machines apply to a wide range of entities, including all entities that use the telephone or facsimile machine to advertise. 47 CFR 64.1200. That is, our action affects the myriad of businesses throughout the nation that use telemarketing to advertise. For instance, funeral homes, mortgage brokers, automobile dealers, newspapers and telecommunications companies could all be affected. Thus, we expect that the rules adopted in this proceeding could have a significant economic impact on a substantial number of small entities.

179. Nationwide, there are a total of 22.4 million small businesses, according to SBA data. And, as of 1992, nationwide there were approximately 275,801 small organizations [not-for-profit].

180. Again, we note that our action affects an exhaustive list of business types and varieties. We will mention with particularity the intermediary groups that engage in this activity. SBA has determined that "telemarketing bureaus" with \$6 million or less in annual receipts qualify as small businesses. See 13 CFR 121.201, NAICS code 561422. For 1997, there were 1,727 firms in the "telemarketing bureau" category, total, which operated for the entire year. Of this total, 1,536 reported annual receipts of less than \$5 million, and an additional 77 reported receipts of \$5 million to \$9,999,999. Therefore, the majority of such firms can be considered to be small businesses.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

181. The rules contained herein require significant recordkeeping