

As stated above and in the Revised Fee NPRM, these fees are based on certain assumptions and estimates. The Commission anticipates that these fees may need to be reexamined periodically and adjusted, in future rulemaking proceedings, to reflect actual experience with operating the registry.

V. Operation of the National Registry for the Telemarketing Industry

The Commission is developing a fully-automated, secure website dedicated to providing members of the telemarketing industry with access to the registry's list of telephone numbers, sorted by area code. The first time an entity accesses the system, it will be asked to provide certain limited identifying information, such as company name and address, company contact person, and the contact person's telephone number and email address. If an entity is accessing the registry on behalf of a seller-client, the entity also will need to identify that client.

The only consumer information that companies will receive from the national registry is a registrant's telephone number. Those telephone numbers will be sorted and available by area code. Companies will be able to access as many area codes as desired, by selecting, for example, all area codes within a certain state. Of course, companies also will be able to access the entire national registry, if desired. In addition, after providing the required identifying information and paying the appropriate fee, if any, companies will be allowed to check, via interactive Internet pages, a small number of telephone numbers (less than ten) at a time to permit small volume callers to comply with the national registry requirements of the TSR without having to download a potentially large list of all registered telephone numbers within a particular area.

As previously stated, sellers, telemarketers and other service providers will be allowed to access the national registry. When a seller first submits an application to access registry information, the company will be asked to specify the area codes that it wants to access. As discussed above, each seller accessing the registry data will be

required to pay an annual fee, based on the number of area codes of data the seller accesses. Fees will be payable via credit card (which will permit the real-time transfer of data) or electronic funds transfer (which will require the seller to wait approximately three days for the funds to clear before data access will be provided). A seller must pay these fees prior to gaining access to the registry, and may do so either directly or through another entity to which the seller has provided the necessary authority.

Sellers will be able to access data as often as they like during the course of one year (defined as their "annual period") for those area codes for which they have paid. However, to protect system integrity, an account number will support a download of the entire national registry only once in any 24-hour period. If, during the course of their annual period, sellers need to access data from more area codes than those initially selected, they would be required to pay for access to those additional area codes. For purposes of these additional payments, the annual period is divided into two semi-annual periods of six months each. Obtaining additional data from the registry during the first semi-annual, six month period will require a payment of \$25 for each new area code. During the second semi-annual, six month period, the charge of obtaining data from each new area code requested during that six-month period is \$15. These payments for additional data would provide sellers access to those additional areas of data for the remainder of their annual term.

After payment is processed, the seller will be given a unique account number and permitted access to the appropriate portions of the registry. That account number will be used in future visits to the website, to shorten the time needed to gain access. On subsequent visits to the website, sellers will be able to download either a full updated list of numbers from their selected area codes, or a more limited list, consisting only of changes to the registry that have occurred since the company's last download. This would limit the amount of data that a company needs to download during each visit.

Telemarketers and other service providers working on behalf of sellers may obtain access to the registry either directly or through the use of their seller-client's unique account number. If access is gained directly, *i.e.*, the telemarketer or service provider decides to obtain the information on its own behalf, either voluntarily or to satisfy other legal requirements, that telemarketer or service provider will need to comply with all requirements

placed on sellers accessing the registry, as previously discussed in this Section. Such telemarketers and service providers will be provided a unique account number that can be used only by that company, *i.e.*, that account number will not authorize other companies to access the registry on behalf of the telemarketer or service provider. On the other hand, if telemarketers or service providers are accessing the registry through the use of their seller-client's account number, the extent of their access will be limited to the area codes requested and paid for by their seller-clients. They also will be permitted to access the registry as often as they wish for no additional cost, once the annual fee has been paid by their seller-clients.⁷⁸ As indicated in the Rule NPRM discussion of Section 310.4(b)(3)(iv), however, the Rule requires a seller or telemarketer to employ a version of the do-not-call registry obtained from the Commission no more than three months prior to the date any telemarketing call is made.

Data will be available from the national registry using Internet-based formats and download methods that serve both small and large businesses. Data also will be available in three different sets: full lists, change lists, and small list lookups. For the full lists and the change lists, downloads may be accomplished via a web browser or a programmatic web service. For the small list lookup, a web page will allow a person to enter from one to ten telephone numbers on a form. After entering the numbers and clicking a button, the national registry will display on the web page the list of numbers entered and whether each number is in the national registry or not.

With a web browser, a person will access a secure web page that will allow the person to select: a national download (all area codes), all area codes from individual states, or individual area codes.⁷⁹ After selecting the area codes, the person will choose a flat text file or an XML tagged data file. The person also will choose a zipped or unzipped file. After making these selections, the person will click a "download" button and be prompted to save the file to his or her company computer. If the person chooses the full list, the flat file will contain just ten-digit telephone numbers, with a single

⁷⁸ Telemarketers and service providers working on behalf of sellers also will be limited to downloading the entire national registry only once in any 24-hour period.

⁷⁹ When new area codes are added, the "by state" display temporarily will show a new area code proximate to but separate from its state, to ensure that the new area code has been paid for.

viewed in its context." *National Awareness Foundation v. Abrams*, 812 F.Supp. 431, 433 (S.D.N.Y. 1994), *aff'd* 50 F.3d 1159 (2d Cir. 1995). The Commission believes that the \$25 fee per area code is nominal, as is the maximum fee of \$7,375 for nationwide access, when considered in the context of an annual fee for members of the telemarketing industry engaged in commercial speech. Cf. *Cox v. New Hampshire*, 312 U.S. 569, 577 (1949) (upholding a fee up to \$300, in 1938 dollars, for a one-day permit to engage in fully protected speech).