

Before the  
Federal Communications Commission  
Washington, DC 20554

In the Matter of	)	
	)	
Petition of Renue Systems Development Corp., Inc., Renue Systems, Inc., and Renue Systems of Chicago, Inc. for Retroactive Waiver of 47 C.F.R. § 64.1200(a)(4)(iv)	)	CG Docket No. 02-278
	)	
	)	CG Docket No. 05-338
	)	

**PETITION FOR WAIVER BY RENUÉ SYSTEMS DEVELOPMENT CORP., INC.,  
RENUÉ SYSTEMS, INC. AND RENUÉ SYSTEMS OF CHICAGO, INC.**

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Development Corp., Inc., Renue  
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Chicago, Inc.

Dated: January 4, 2017

Pursuant to 47 C.F.R. § 1.3 and the Federal Communications Commission’s (“FCC” or “Commission”) Order released on October 30, 2014, in the above-captioned dockets (the “*Anda* Order”), Renue Systems Development Corp., Inc., Renue Systems, Inc., and Renue Systems of Chicago, Inc. (collectively, “Renue”) respectfully request that the FCC grant them retroactive waivers of 47 C.F.R. §64.1200(a)(4)(iv) (the “Opt-Out Rule”) for all facsimile advertisements previously sent by Renue or on its behalf with the recipients’ prior express permission but that did not meet the Opt-Out Rule’s opt-out notice requirements. Within the last few weeks, Renue has become the subject of a putative class action lawsuit for allegedly sending a facsimile advertisement that allegedly lacked the requisite opt-out notice. As set forth below, there is good cause for granting the requested waiver.

## **I. Background**

Renue is a defendant in a putative class action lawsuit alleging violations of the Telephone Consumer Protection Act, 47 U.S.C. § 227 (“TCPA”), that is pending in the United States District Court for the Northern District of Illinois as *Gorss Motels, Inc. v. Renue Systems Development Corp., Inc., Renue Systems, Inc., Renue Systems of Chicago, Inc., and John Does 1-5*, Case No. 16-cv-10975. The complaint contends that the plaintiff allegedly received a single fax from Renue on June 15, 2015 that allegedly did not comply with the Opt-Out Rule. Renue was served with the complaint on December 2, 2016, and promptly retained counsel. This petition follows.

Renue does not ask the Commission to resolve the question of whether the plaintiff in *Gorss Motels* or any other alleged fax recipient consented to the receipt of faxes. Renue merely asks the Commission for a waiver of the Opt-Out Rule requirements on par with the waiver the FCC has provided to similarly situated parties.

## II. Request for retroactive waiver

In its *Anda* Order, the FCC granted a retroactive waiver to all petitioners explicitly referenced in the Order and invited other “similarly situated parties” to seek retroactive waiver as well. *See Anda* Order, at ¶ 30. The Commission encouraged parties making waiver requests to “make every effort to file within six months” of the *Anda* Order, but acknowledged that “all future waiver requests will be adjudicated on a case-by-case basis and [the Commission does] not prejudge the outcome of future waiver requests in this Order.” *Id.* Here, Renue was not aware of any claims against it for violations of the TCPA until December 2, 2016 — long after the expiration of the six-month period set forth in the *Anda* Order. Renue therefore had no reason to file a petition within the original six-month period because it did not believe that there was any question about the legality of the faxes that may have been sent. Upon being served with the Complaint, Renue acted promptly in retaining counsel and filing this Petition. Accordingly, Renue’s Petition should not be prejudiced simply because it was not filed within the proposed six-month window.

Because the FCC’s findings in support of a retroactive waiver apply with equal force to Renue and Renue is in a similar position to the original petitioners, a retroactive waiver should be granted. Renue therefore asks the Commission to waive compliance with Section 64.1200(a)(4)(iv) for all faxes previously sent by or on behalf of Renue with the recipient’s consent.

The Commission may waive any provision of its rules for “good cause shown.” 47 C.F.R. § 1.3.<sup>1</sup> As the FCC concluded in the *Anda* Order, good cause for a retroactive waiver

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<sup>1</sup> The “good cause” for a waiver exists when “special circumstances warrant a deviation from the general rule and such deviation will serve the public interest.” *Northeast Cellular Tel. Co., L.P. v. FCC*, 897 F. 2d 1164, 1166 (D.C. Cir. 1990). The FCC already concluded in the

exists here in part because the “inconsistency” between a footnote in an earlier FCC order (stating that “the opt-out notice requirement only applies to communications that constitute *unsolicited* advertisements” (emphasis added)) and the Opt-Out Rule has “caused confusion or misplaced confidence” regarding the applicability of the Opt-Out Rule to facsimiles sent with prior express permission. *See Anda Order*, at ¶ 24. The Commission correctly noted that this “confusion” has “left some businesses potentially subject to significant damage awards.” *Id.* at ¶ 27. As a result of the litigation recently filed against it, Renue now faces the costs of defense and a potential judgment. “[O]n balance . . . it serves the public interest . . . to grant retroactive waiver to ensure that any such confusion did not result in inadvertent violations of this requirement while retaining the protections afforded by the rule going forward.” *Id.*

Thus, for the same reasons set forth in the *Anda Order*, there is good cause for granting a retroactive waiver to Renue. *See generally Anda Order*, at ¶¶ 22-31.

### **III. Conclusion**

For the foregoing reasons, Renue respectfully requests that it be granted a waiver from the opt-out notice requirements of 47 C.F.R. §64.1200(a)(4)(iv) for all facsimiles sent by Renue after the regulation’s effective date and before the date of this Petition for which Renue had the recipient’s consent.

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*Anda Order* that there are special circumstances in this case and the public interest is served by waiver. *Anda Order*, at ¶¶ 24, 27.

Respectfully submitted,

RENUE SYSTEMS DEVELOPMENT CORP.,  
INC., RENUE SYSTEMS, INC., and RENUE  
SYSTEMS OF CHICAGO, INC.

By:     /s/ Jeanah Park      
One of their attorneys

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Dated: January 4, 2017

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this **4th** day of **January 2017**, I served a copy of the foregoing by U.S. Mail to the following counsel of record in the underlying lawsuit:

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