

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of

Rules and Regulations Implementing the  
Telephone Consumer Protection Act of 1991;  
Junk Fax Prevention Act of 2005

CG Docket No. 02-278

CG Docket No. 05-338

**COMMENTS OF RINGCENTRAL, INC.**

RingCentral, Inc. agrees with Akin Gump’s request that the Commission clarify the meaning of “sender” under the Telephone Consumer Protection Act (“TCPA”).<sup>1</sup> Specifically, the Commission should make plain that the term “sender” does not include entities that merely *dispatch* others’ faxes, but rather includes only the persons or entities that *compose* the fax at issue and/or *choose* the recipient(s) of the fax. That meaning is consistent with Congress’s intent in enacting the TCPA, as well as the FCC’s own authority. Doing so is necessary to provide much-needed clarity to courts and litigants while ensuring that the TCPA continues to protect injured consumers by holding accountable the bad actors who initiate unsolicited advertisements. In the alternative, the FCC could clarify that the inclusion of a service provider tag line on an optional cover sheet falls within the de minimis advertising exception.

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<sup>1</sup> The TCPA is codified at 47 U.S.C. § 227. The Commission’s implementing rules are codified at 47 CFR § 64.1200.

## **I. Introduction and Legal Background**

RingCentral writes in response to the Commission’s March 7, 2019 Public Notice, seeking comment on a petition (“Petition”) filed by Akin Gump Strauss & Feld LLP (“Akin Gump”).<sup>2</sup> The Petition asks the Commission for an expedited clarification or declaratory ruling that, under the “Junk Fax Rules” of the TCPA, “a fax broadcaster is the sole liable ‘sender,’ when it both commits TCPA violations and engages in deception or fraud against the advertiser (or blatantly violates its contract with the advertiser) such that the advertiser cannot control the fax campaign or prevent TCPA violations.”<sup>3</sup> Although Akin Gump and RingCentral approach this issue from different perspectives, RingCentral agrees—and likewise petitioned the Commission in 2016<sup>4</sup>—that such clarity is crucial.

RingCentral is a global provider of cloud unified communications and collaboration products, offering adaptable services that can be integrated with a range of other services to create robust solutions for customers. The public benefits from RingCentral’s technology and services, as RingCentral provides its customers flexible, customizable communications options that can meet a wide range of needs. One such option is a virtual fax service. Using this service, customers may send their documents to a fax number that they select, just as they may have used a physical fax machine in the past.

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<sup>2</sup> *Consumer and Governmental Affairs Bureau Seeks Comment on Akin Gump Straus & Feld LLP Petition for Expedited Clarification or Declaratory Ruling*, Public Notice, DA No. 19-159, CG Docket Nos. 02-278 & 05-388 (rel. Mar. 7, 2019).

<sup>3</sup> *Id.* at 1 (quoting Akin Gump Strauss & Feld LLP, Petition for Expedited Clarification or Declaratory Ruling at 3, CG Docket Nos. 02-278 & 05-388 (filed Feb. 26, 2019)).

<sup>4</sup> *See generally* RingCentral, Inc., Petition for Declaratory Ruling, CG Docket No. 02-278 (filed July 6, 2016) (“RingCentral Petition”).

In offering this service, RingCentral seeks to meet the needs of the many businesses that send legitimate faxes to their customers and others who are interested in receiving them, and thus to fully comply with the TCPA. For the reasons described below, RingCentral thus requests that the Commission address the meaning of “sender” under the TCPA so that courts and litigants have clarity as to the scope of sender liability, enabling RingCentral and other market actors to continue to provide innovative communications services without being subject to unmeritorious lawsuits.

## **II. RingCentral Agrees that the Commission Should Clarify the Meaning of “Sender” Under the Junk Fax Rules of the TCPA.**

The TCPA prohibits “any person within the United States . . . [from] us[ing] any telephone facsimile machine, computer, or other device to send, to a telephone facsimile machine, an unsolicited advertisement.”<sup>5</sup> Commission rules define a “sender” of a fax as “the person or entity on whose behalf a facsimile unsolicited advertisement is sent or whose goods or services are advertised or promoted in the unsolicited advertisement.”<sup>6</sup> One problem with this definition, however, is that plaintiffs have argued that the phrases “on whose behalf” and “whose goods or services are advertised or promoted”—particularly when interpreted alongside other provisions of the TCPA—creates liability for parties, like RingCentral, that are not responsible for sending unwanted faxes. Although Commission precedent states that liability should not attach to entities that do not originate or control “the content of the . . . message,”<sup>7</sup> courts have not consistently given effect to that

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<sup>5</sup> 47 U.S.C. § 227(b)(1)(C).

<sup>6</sup> 47 C.F.R. § 64.1200(f)(10).

<sup>7</sup> *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, 10 FCC Rcd. 12,391, 12,407 n.90 (1995) (“1995 TCPA Order”); *see also Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, 21 FCC Rcd. 3787, 3808 (2006) (“2006 TCPA Order”) (noting that fax broadcasters could be liable only if they have “a high degree of involvement in, or actual notice of, the unlawful activity and fail[] to take steps to prevent such facsimile advertisements”).

precedent,<sup>8</sup> or have found that the ambiguity of the “sender” definition precludes summary judgment,<sup>9</sup> causing both fax providers and advertisers to face liability risk and incur substantial litigation costs defending against unmeritorious claims.

In particular, RingCentral has been sued under the TCPA for what brick-and-mortar office services stores like FedEx-Kinko’s have been doing for ages: offering customers who use their faxing services the option to use a generic fax cover sheet with a small logo, URL, and tagline, if customers do not provide their own cover sheet.<sup>10</sup> Like brick-and-mortar office services stores, RingCentral simply transmits a customer’s fax, including a cover sheet with a RingCentral branded tag line if the customer has elected to use that cover sheet, and has no control over the fax’s content or recipients. In merely supplying the mechanism—albeit a digital one rather than a physical one—by which the fax is sent, RingCentral is not the party that “cause[s] [faxes] to be sent.”<sup>11</sup>

Nevertheless, the plaintiff in a recent action sued RingCentral after it received a fax from an individual who had elected to use RingCentral to send his fax, and who chose to use one of RingCentral’s form cover sheets instead of one of his own creation. The specific form cover sheet that the individual selected contained a small footer with a small RingCentral logo in the lower-right

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<sup>8</sup> See generally, e.g., *Health One Medical Ctr. v. Mohawk, Inc.*, 889 F.3d 800 (6th Cir. 2018) (interpreting the term “send” in the relevant statute and regulation but not addressing the Commission’s related orders) (“*Health One*”); *Palm Beach Golf Center-Boca, Inc. v. Sarris*, 981 F. Supp. 2d 1239 (S.D. Fl. 2013) (reasoning that the vicarious liability principles the Commission has applied to the telemarketing provisions of the TCPA also apply to the fax provisions); see also RingCentral Petition at 17 n.32.

<sup>9</sup> E.g., *Cin-Q Auto., Inc. v. Buccaneers Ltd. Partnership*, No. 8:13-cv-01592-AEP, 2014 WL 7224943 at \*5–8 (finding that material issues of fact exist “as to the nexus between the offending conduct and . . . [the] party on whose behalf the faxes were sent”).

<sup>10</sup> See *Supply Pro Sorbents, LLC v. RingCentral, Inc.*, 743 Fed. Appx. 124, 124 (9th Cir. Nov. 20, 2018) (“*Supply Pro*”).

<sup>11</sup> See *Health One*, 889 F.3d at 802.

From: Shahed Khan

Fax: 661-661-1004 Email: Shahed.Khan@RingCentral.com Date: 04/13/2016 Page: 1 of 1

# FAX

**Date:** 04/13/2016

**Pages including cover sheet:** 4

<b>To:</b>	Phillip J Barron
<b>Phone</b>	
<b>Fax Number</b>	+1 (713) 674-7659

<b>From:</b>	Shahed Khan
	Aplomb Corporate Training
	TX 77382
<b>Phone</b>	(281) 661-1002 * 101
<b>Fax Number</b>	(281) 661-1004

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**RingCentral**

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The Ninth Circuit ultimately determined that the lawsuit against RingCentral was without merit. But neither the district court nor the Ninth Circuit resolved the suit on the question of whether RingCentral operated as a liable “sender” of the faxes in the first place, simply by virtue of having offered its customer a cover sheet that included a footer identifying RingCentral as the underlying service provider<sup>12</sup>—the resolution that would have provided the most clarity and predictability going forward for RingCentral and other similarly-situated entities. To the contrary, the District Court initially found that on these facts RingCentral could “fall with the statutory definition of sender, regardless of the participation of the third party user in the transaction.”<sup>13</sup> That reading of the statute, however, fails to give effect to the Commission’s precedent explaining that liability should not attach to entities that do not originate or control the content of a fax message.<sup>14</sup> RingCentral was eventually able to prevail, on different grounds, at both the District Court and Ninth Circuit, with the Ninth Circuit holding that RingCentral’s tagline was not an “unsolicited advertisement” because the “amount of space devoted to advertising versus the amount of space used for information” rendered the tagline, as an alleged advertisement, “incidental.”<sup>15</sup>

Though successful in defending against the plaintiff’s overbroad reading of the TCPA and its implementing regulations, RingCentral bore considerable expense in doing so. The Commission can

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<sup>12</sup> *Id.*

<sup>13</sup> *Supply Pro Sorbents, LLC v. RingCentral, Inc.*, No. C 16-02113 JSW, 2016 WL 5870111, at \*4 (N.D. Cal. Oct. 7, 2016).

<sup>14</sup> 1995 TCPA Order, 10 FCC Rcd. at 12,407 n.90; *see also* 2006 TCPA Order, 21 FCC Rcd. at 3808 (noting that fax broadcasters could be liable only if they have “a high degree of involvement in, or actual notice of, the unlawful activity and fail[] to take steps to prevent such facsimile advertisements”).

<sup>15</sup> *Supply Pro*, 743 Fed. Appx. at 124–25 (quoting *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991 and Junk Fax Prevention Act of 2005*, 21 FCC Rcd. 3787, 3814 ¶ 53 (2006) (“2006 Junk Fax Order”).

help address the risk of unmeritorious lawsuits by making clear that claims like this should be dismissed at the outset because service providers like RingCentral are not “senders” in these circumstances. Without such clarity, RingCentral and other providers continue to face unwarranted exposure under the TCPA. RingCentral thus agrees with Akin Gump’s request that the Commission mitigate this risk and ensure that the TCPA functions as intended by clarifying the meaning of “sender.”

### **III. Clarifying the Meaning of “Sender” to Limit Its Application to Entities that Compose a Fax or Cause a Fax to Be Sent Would Serve the Public Interest.**

Although RingCentral agrees with Akin Gump that clarification is necessary, RingCentral requests that the Commission provide that clarity in a broader way. In its Petition, Akin Gump adopts the perspective of a company subject to an unmeritorious lawsuit because a rogue fax broadcaster has sent unsolicited faxes that advertise that company’s products or services.<sup>16</sup> Akin Gump rightfully points out that the Commission’s definition of “sender” should exclude advertisers when a fax broadcaster engages in conduct such that the advertiser does not control the content of the fax or its recipients.<sup>17</sup>

RingCentral, however, asks the Commission to clarify the scope of sender liability more broadly. Its requested clarification would serve the public interest by helping ensure that the TCPA functions as a tool to protect truly injured consumers, rather than an invitation to opportunistic plaintiffs’ counsel to manufacture lawsuits from innocent conduct. Such clarification would

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<sup>16</sup> Petition at 7–8.

<sup>17</sup> Petition at 3.

likewise vindicate Congressional intent. As the Sixth Circuit recognized in *Health One*, the text of the TCPA does not reach actors like RingCentral.”<sup>18</sup>

The Commission should therefore expressly hold that the fact pattern presented by RingCentral does not give rise to TCPA liability. Specifically, providers are not senders when their customers use an optional fax cover sheet that includes the provider’s tag line. Instead, as with Akin Gump’s request, “sender” liability should only attach to entities that compose the actual fax message and/or choose its recipient(s). This holding will assist the courts by providing them with the clarification necessary to address unmeritorious lawsuits in the early stages and free them to handle the types of claims the TCPA was intended to reach.

**IV. Alternatively, the Commission Could Clarify that RingCentral’s Tag Line Falls Within the De Minimis Advertising Exception.**

If the Commission does not choose to broadly clarify the meaning of “sender” under the Junk Fax Rules, RingCentral respectfully requests a narrower clarification—specifically, that the tag line on RingCentral’s fax cover sheets *per se* falls within the de minimis advertising exception to the TCPA. The Commission has held that a fax broadcaster may include a de minimis amount of advertising content in a fax without converting the fax into an unsolicited advertisement.<sup>19</sup> This principle makes sense because a de minimis amount of advertising in an otherwise lawful fax does not create the consumer harm that the TCPA was designed to prevent—namely, the violation of consumers’ privacy rights through unsolicited telephone or fax communications.<sup>20</sup> Indeed, the Ninth Circuit decided the case discussed above relied on these grounds, concluding that the de

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<sup>18</sup> *Health One*, 889 F.3d at 802.

<sup>19</sup> 2006 Junk Fax Order, 21 FCC Rcd. at 3825 ¶ 72.

<sup>20</sup> See 47 U.S.C. § 227(c); Letter from Laurence N. Bourne, General Counsel, FCC, to John Ley, Clerk of Court, U.S. Court of Appeals for 11th Cir., at 2 (July 17, 2014).



de minimis advertising exception applied to RingCentral's tag line.<sup>21</sup> An express holding by the Commission would provide RingCentral, as well as other online fax providers that use similarly de minimis tag lines, with the same treatment as brick-and-mortar office supplies stores and allow such providers to mitigate their litigation burdens by more easily dismissing unwarranted lawsuits in their early stages.

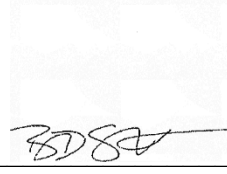
## **V. Conclusion**

RingCentral respectfully asks the Commission to clarify the meaning of "sender" under the Junk Fax Rules of the TCPA such that its application is limited to entities that take affirmative actions to dispatch a fax or otherwise cause it to be sent, by, for example, composing the actual fax message and choosing its recipient(s). Alternatively, the Commission could expressly hold that the tag line on RingCentral's fax cover sheets *per se* falls within the de minimis advertising exception to the TCPA. Either path is consistent with the Congressional intent behind the TCPA, would provide certainty and predictability to communications providers like RingCentral, and would serve the public interest by better protecting consumers' privacy rights.

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<sup>21</sup> *Supply Pro*, 743 Fed. Appx. at 124–25.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'BDS', is positioned above a horizontal line.

Brita D. Strandberg  
Courtney Miller  
HARRIS WILTSHIRE &  
GRANNIS LLP  
1919 M Street NW  
Washington, D.C. 20036

Rachel A. Petty  
Assistant General Counsel  
RINGCENTRAL, INC.

*Counsel to RingCentral*