

BEFORE THE  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

<i>In the Matter of</i>	)	
	)	CG Docket No. 02-278
Petition of Akin Gump Strauss Hauer & Feld	)	CG Docket No. 05-338
LLP for Clarification	)	

**MOTION TO ACCEPT LATE-FILED COMMENTS**

Edelman, Combs, Lattuner & Goodwin, LLC respectfully submits this Motion to Accept Late-Filed Comments to the petition of Akin Gump Strauss Hauer & Feld, LLP for expedited clarification or declaratory ruling. The Comments respond to the Public Notice issued by the Commission on March 7, 2019 (DA 19-159).

The Comments were due on April 8, 2019. Due to technical issues on the ECFS, the Comment was unable to be filed timely. These technical issues were documented in correspondence to the ECFS Help email and have subsequently been resolved.

My firm represents consumers who were sent unsolicited junk faxes and we believe that the record would benefit from this input.

Edelman, Combs, Lattuner & Goodwin, LLC respectfully requests the FCC to accept these late-filed Comments.

Respectfully submitted,  
s/ Daniel A. Edelman  
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**COMMENT TO PETITION OF AKIN GUMP STRAUSS HAUER & FELD LLP**

Edelman Combs Lattuner & Goodwin, LLC respectfully submits this Comment to the petition filed by Akin Gump Hauer & Feld LLP (“Akin Gump”). Edelman Combs Lattuner & Goodwin, LLC represents consumers who were sent unsolicited junk faxes. I submit these comments in my professional capacity as an attorney for consumers who are frustrated and annoyed by receiving unsolicited, junk faxes from companies who ignore and/or evade the Telephone Consumer Protection Act, 47 U.S.C. § 227 (“TCPA”). As discussed below, the Akin Gump petition for expedited clarification or declaratory ruling should be denied.

In 1995, the FCC issued an order clarifying that “the entity or entities on whose behalf facsimiles are transmitted are ultimately liable for compliance with the rule banning unsolicited facsimile advertisements.” *In re Rules & Regulations Implementing the Telephone Consumer Protection Act of 1991*, 10 FCC Rcd 12391, 12407 (1995). This definition was codified in 2006 in 47 C.F.R. 64.1200(f)(10), which defines a sender 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.” This interpretation of “sender” should not be changed.

In 2006, the Commission addressed the issue Akin Gump seeks clarification on in its petition. The Commission distinguished between the business on whose behalf a junk fax was

sent and the entity who provides the service of transmitting the fax. “[T]he sender is the person or entity on whose behalf the advertisement is sent. In most instances, this will be the entity whose product or service is advertised or promoted in the message.” *In the Matter of Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991; Junk Fax Prevention Act of 2005*, 21 FCC Rcd. 3787, 3808 (2006) (“2006 Junk Fax Order”).

Akin Gump suggests that clarification is necessary because companies have become victims to rogue fax broadcasters who have exposed companies to liability. Accordingly, Akin Gump asks the Commission to “clarify” who is a sender in this context.

Akin Gump has failed to identify any ambiguity in the 2006 Junk Fax Order that necessitates clarification. “We find that a fax broadcaster that provides a source of fax numbers, makes representations about the legality of faxing to those numbers or advises a client about how to comply with the fax advertising rules, also demonstrates a high degree of involvement in the transmission of those facsimile advertisements.” *Id.* at ¶40. The Commission determined in this situation that “the sender and fax broadcaster may be held jointly and severally liable”. *Id.* Courts in the Seventh Circuit have used an agency analysis to determine liability. *Bridgeview Health Care Center Ltd. v. Clark*, 816 F.3d 935 (7<sup>th</sup> Cir. 2016).

In sum, the definition of “sender” must stand 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.” This definition implies that under general tort principles causation must exist such that the defendant’s conduct (consent, actions, authority) is the reason that the unsolicited advertising facsimiles were sent.

For the foregoing reasons, the Commission should deny Akin Gump's petition for expedited clarification or declaratory ruling.

Respectfully submitted,

s/ Daniel A. Edelman

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