

CONSUMER AND GOVERNMENTAL AFFAIRS BUREAU SEEKS COMMENT ON A PETITION FOR
DECLARATORY RULING FILED BY AMERIFACTORS FINANCIAL GROUP, LLC

DA 17-690, CG Docket No. 02278, CG Docket No. 05338

According to the statutory definitions of the TCPA a fax must be sent and received by “telephone line” (POTS). The FCC job is to enforce the TCPA and not to create or change the law, but this has not been the case recently. Congress created the TCPA to regulate the sending and receiving of fax’s to protect the consumer. This petition doesn’t even involve a “consumer”, it involves a “business”. The TCPA is very clear that if a business advertises it’s “facsimile number” to the public as a means to contact them, which the plaintiff in this case clearly does, the plaintiff has abandoned its right of privacy. The FCC years ago unlawfully removed this lawful exemption; it does not have the authority to enforce its own regulations and add additional requirements into law.

The removal of exemptions and twisting of the TCPA’s statutory definitions have been an abomination of law. The Westfax petition and decision is clearly one example of how an out of control plaintiff bar and the FCC have created and changed actual law. The public demands and deserves the reinstatement of the actual statutory definitions within the TCPA.

The FCC was clearly wrong in the Westfax decision. The FCC made a colossal error in the decision to completely ignore statutory definitions and overstep its authority. The FCC’s decision to declare that it does not matter how a recipient receives a fax is absurd. The TCPA’s statutory requirements are not “interpretable guidelines”, they are specific and crystal clear. To violate the TCPA fax provisions the statutory definitions have to be violated, in the petitioner’s case there was no violation. The plaintiff received a digital fax, not a “telephone line” fax. It is important to comprehend why this is important.

Congress created the TCPA fax provision to protect the consumers from having their fax machines bombarded with fax’s that hi-jacked their fax machines, used up expensive paper, toner and also tied up their phone line during the transmission. Statutory definitions were purposely embedded into the law to provide the protections from the above. The FCC’s Westfax decision could not have been more wrong, it fails on “EVERY” statutory defined requirement in its reasoning and decision. It failed because none of the TCPA statutory guidelines are violated by receiving a e-fax via email. Receiving an e-fax does not use and paper, toner, convert the facsimile machine nor hi-jack the phone line at any time. The recipient of a e-fax is clearly undoubtedly and unequivocally receiving and email. To say otherwise is irrational and put bluntly, stupid.

Analog technology uses a regular telephone line (POTS). TCPA statutory definitions state clearly a fax must be sent and received by a regular telephone line because it causes a portion of the damages it sought to protect the public from.

E-fax (TCP/IP) protocol. (TCP/IP) nevr uses a statutory defined “telephone line”, it causes “NO” statutory violations, it is simply an email. It does not matter the senders intent, what matters is it did not violate the TCPA in ANY WAY. An e-fax does not violate the TCPA.

1. E-faxing does not violate the TCPA's "telephone line" requirement that hi-jacks and ties up the telephone line. (The recipient of and E-fax can receive a million e-faxes at a time and never miss a fax nor does it cost money)
2. E-faxing does not violate the TCPA's "conversion of the fax machine and cause wear and tear, use paper and toner". (The recipient of and E-fax gets an email, it is simply an email nothing more nothing less.)

The FCC's Westfax ruling clearly defines its decision yet ignores the facts.. Below is a transcript of the FCC's decision:

"The Commission's rules define "telephone facsimile machine" to mean "equipment which has the capacity to transcribe text or images, or both, from paper into an electronic signal and to transmit that signal over a regular telephone line, or to transcribe text or images (or both) from an electronic signal received over a regular telephone line onto paper"

The petitioner has stated the recipient received the transmission by email not a "regular telephone line" and probably sent the e-fax via TCP/IP protocol and not a "regular telephone line". The petitioner if he sent via TCP/IP did not violate the TCPA as well.

The FCC clearly makes un-factual/incorrect statements in the Westfax decision. E-faxes are sent as a digital transmission not a "telephone line". E-faxes use TCP/IP protocol never using a "telephone line". Below is the actual FCC's rational which totally contradicts itself:

"E-faxes are sent as a fax over a telephone line to a telephone facsimile machine and are thus subject to TCPA and the Commission's rules. By contrast, a fax sent as an email over the Internet – e.g., a fax attached to an email message or a fax whose content has been pasted into an email message – is not subject to the TCPA.

The Westfax decision is wrong on many levels, in fact there is virtually nothing in the Westfax decision that supports the facts or statutory requirements of the TCPA. I support the petitioner.

Javier Gonzalez

907 S Smith Ave Apt 202 , Corona CA 92882-6520