**REGARDING THE FCC’s REQUEST FOR COMMENT:**

DA 17-690

AMERIFACTORS FINANCIAL GROUP, LLC PETITION FOR DECLARATORY RULING

CG Docket No. 02278

CG Docket No. 05338

Comment Date: August 17, 2017

The Amerifactors petition brings to light how attempting to apply technology statutes created 20+ years ago without proper timely amendments or declaratory rulings can have devastating impacts to businesses and our economy. Due to the ability of serial TCPA lawyers to leverage this situation regarding electronic communications that they claim are statutorily defined facsimiles to their own benefit, many small businesses have been shut down and lives ruined. Hundreds of millions of dollars in TCPA settlements and legal fees over the last five years alone have also significantly damaged large corporations as well, which in-turn has the effect of said companies having to raise their prices on their products and services to compensate for the losses. This specific legal loophole I am referencing impacts every American in an adverse way and does not ultimately serve the public interest. This is especially true with the Facsimile components of the TCPA & JFPA statutes. There are rarely any FCC ECFS comments from regular citizens regarding unwanted faxes and that is because the technology landscape has changed so much over the last 5-8 years that receiving electronic communications via email (efax) simply doesn’t cause undue burden on limited phone lines or harm related to ink/toner, paper, machine wear and tear. Receiving unwanted fax advertisements on “legacy” statutorily defined facsimile machines using regular telephone lines is quite different and those few left in our society that do use such devices still have recourse under the TCPA/JFPA.

As the Amerifactor petition points out on multiple occasions, the TCPA statute was created many years ago when facsimile (fax) communications were facilitated through machines that leveraged the following components:

● **A facsimile machine** , ranging in cost, but at the time could be considered “expensive”.

● **Expensive Thermal Paper** , which at that time was many multiples more expensive than standard plain office paper.

● **Expensive Ink/Toner & Paper** , in cases where facsimile machines leveraged plain office paper and expensive ink/toner as the printing medium.

● **Expensive and typically limited analog telephone lines.** Each facsimile communication required a single analog phone line and at that time limited capabilities of analog phone lines running at slow baud rates and ITUT (T.2 Group 1) **could** take up to six minutes **per page** for each facsimile communication.

The spirit and thus the language of the original TCPA statute was crafted to protect consumers from

unwanted facsimile transmissions due to the inherent costs of the above referenced facsimile

technology available at the time, as well as the loss of use of the limited and costly analog or digital phone lines leveraged by this form of communications technology at the time.

The challenge today is how to accurately define various types of analog and digital communications in respect to the spirit and goals of the TCPA act. As an example, if a person sends a digital image of an advertisement to another person via a smartphone iOS app named “Super Fabulous FAX” and the receiving person receives that advertisement within the same “Super Fabulous FAX” iOS application,

are we to consider this a facsimile governed by the TCPA just because the publisher of the iOS app

included the word “FAX” in its name? Absolutely not. The iOS app does not conform to the statutory

definition of a “facsimile machine” as defined by the TCPA and confirmed by the commission on

numerous occasions. Nor does this example of data communication leverage expensive paper, ink or

toner, or tie up limited phone line capacity. Thus, we certainly can see that this example form of data

communication is not in line with the spirit or statutory language of the TCPA, other than the decision by

the creator of the application to name the product **“Super Fabulous FAX”**. The same can be said about most other forms of digital data communications over TCP/IP (Internet Protocol), regardless of the creator's name of their product including the word “EFAX” or other entities referring to said possible communications as “EFAXES”. In fact, there are hundreds of thousands of applications, social websites, etc. that leverage data communications over TCP/IP (Internet Protocol) capable of sending and receiving messages that can include images, photos, and text characters. Facebook, Doximity, Twitter, Google+, Instagram, just to name a few. We certainly do not govern these data communications under the TCPA.

This thought process should also apply to Amerifactors assertion, to which I would agree that a digital “message” communication being sent and/or received in a digital “message” format that does not specifically meet the legal definition of a facsimile machine using regular telephone lines cannot possibly be governed by the TCPA. With that said, I believe if the receiving party has received said digital communication via email, then yes, this specific digital “message” communication could possibly be governed by the CANSPAM act as the receiving party received the digital communication as an email

within their email system, regardless of how the digital communication originated.

The TCPA and FCC have statutory definitions for a “telephone facsimile machine”. To quote, the statutory definition is: “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.”

Technology is ever changing. Improving and evolving. This has never been truer than in the area

of “communications”. Since the inception of the TCPA act, dramatic changes in communications have

taken place. New communications protocols like TCP/IP (Transmission Control Protocol/Internet

Protocol) have enabled data communications over the internet, which has dramatically impacted electronic and document messaging. The advent of email (SMTP) over TCP/IP and hundreds of different “apps” that allow audio, video, pictures, digital documents and typed data communications between similar and dissimilar computing devices (smartphones, tablets, PC’s, etc.) all via TCP/IP, have evolved and proliferated. Modern day efax solutions are a perfect example and we must get a declaratory ruling that clearly states that modern efax solutions are not considered telephone facsimile machines and thus do not fall under the purview of the TCPA.

In closing, I am full support and agree with the Amerifactors petition and hope that the FCC agrees and quickly issues a declaratory ruling.

Respectfully,

Michael Friend.