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

*““DA 17-690*

*Released: July 18, 2017*

*CONSUMER AND GOVERNMENTAL AFFAIRS BUREAU SEEKS COMMENT ON A PETITION FOR DECLARATORY RULING FILED*

*BY AMERIFACTORS FINANCIAL GROUP, LLC*

*CG Docket No. 02278*

*CG Docket No. 05338*

*Comment Date: August 17, 2017*

*Reply Comment Date: September 01, 2017””*

I am commenting in strong support of Amerifactors petition for declaratory ruling. Let me first point out that the general public is not bothered or concerned much about the junk fax component of the TCPA as evidenced by the inherent lack of opposing comments on the Westfax Petition, the Ryerson Petition and I predict with this Amerifactors Petition as well. The only opposing comments in the past have been by serial TCPA lawyers, plaintiffs involved in TCPA class action suits and professionals paid by these aforementioned actors. These opposing comments should be digested with the understanding that they should not be misconstrued as representative of the general public. Also, let me state that I am not currently and have never been a defendant in a TCPA action, nor do I have any relationship whatsoever to Amerifactors, Ryerson or Westfax. I am a normal citizen who has been following some of the abuses in our legal system and statutes that unjustly enrich mainly lawyers and crush businesses in America today. TCPA Class Actions caught my attention because of the massive crushing settlements and case judgements that most of the time have billion-dollar fine potentials with some even in the trillions. Facebook, as an example, could stand to lose their entire company and be put out of business if they choose to fight their TCPA case and lose, so their only option is to settle for probably something approaching $100 million dollars. How does a TCPA case like this example serve the interest of the general public? Facebook gone forever?? It doesn’t. This is absurd and quite frankly is unconstitutional as the penalties attached to such class actions are at such ludicrously high dollar amounts when compared to the harm/damage caused by the supposed action. Make no mistake, every company in existence can be destroyed should they choose to fight a TCPA class action, regardless of their size. No company in existence could survive losing a class action TCPA case with penalties in the trillions. Either congress must amend the TCPA to only be allowed individual rights of actions at the current fine amounts and not allow punitive class actions, OR amend the statute fine amounts to only include actual damages, i.e. something like .05 cents per fax or per txt message or per call, etc.

Here are my specific comments on the various points of discussion:

***FAXES RECEIVED ON DEVICES OTHER THAN A “TELEPHONE FACSIMILE MACHINE” DO NOT FIT WITHIN THE PLAIN MEANING OF THE TCPA:*** I agree with Amerifactors reasoning. They go into good detail as to the TCPA’s statutory definitions of a “facsimile machine” and the clear definition that to be governed by the statute the receiving device must be a “facsimile machine” as defined, AND the communication signal must have been transmitted AND received over a regular telephone line. This is critical as congress wanted to make sure that the TCPA statute could NOT be abused to encompass other known and unknown future forms of communication other than those specific types falling into this very specific definition.

***MODERN ONINE FAX SERVICES DO NOT FIT WITHIN THE SCOPE OF “TELEPHONE FACSIMILE MACHINE” AS DEFINED BY THE TCPA:*** I also agree with Amerifactors point here as well. The basic premise is that not every computing device in the world today can be classified as a facsimile machine just because it can electronically send and receive all kinds of various documents and electronic messages. My refrigerator in my kitchen has a computer and LCD display capable of receiving email and other forms of communication and I can send a recipe or any other received document to my wireless printer to print AND I can send emails with attachments to any destination I choose, including an efax address. Common sense would dictate that my kitchen refrigerator while capable of receiving my emails and thus my electronic faxes and print them out if I so choose, is not a “facsimile machine”. Nor would anyone with any common sense believe that Congress would agree that the FCC should position the TCPA to encompass common household refrigerators as “facsimile machines”. I know that this example seems absurd, but this is truly the world of technology that we live in today. The FCC must abide by the most concise language of the statute, which in its entirety states both transmission and reception must be over regular telephone lines (POTS/PSTN) or the devices do not constitute a “facsimile machine”. If the FCC does not clearly state their agreement with this position then serial TCPA lawyers will soon be getting even further unjustly enriched for folks sending and receiving documents to and from their kitchen refrigerators.

**THE HARMS THAT THE TCPA SOUGHT TO AVOID ARE NON-EXISTENT IN THE CONTEXT OF ONLINE FAX SERVICES:** Here again Amerifactors is correct. The House Report relating to the TCPA specifically addressed two forms of harm. The TCPA and House Report does not broadly express what constitutes harm or damages, rather they specifically outline harm as two specific areas: (1) shifting advertising costs to the recipient in the form of ink/toner, paper and wear & tear on the equipment, and (2) rendering the recipients facsimile machine unusable for actual business communications during an unsolicited facsimile. None of these elements exist in modern efax solutions. Again, this point by Amerifactors is simple to understand and clear.

**GRANT OF THE PETITION WOULD RESTORE BALANCE TO PRIVATE RIGHTS OF ACTION INVOLVING FAXES:** I agree with the majority of what is included with Amerifactors petition here. I would also like to add that in cases to where the sender of the communications did not use regular telephone lines then the entire communication transaction cannot be governed by the TCPA statute and rather may fall into the CAN-SPAM act. This is due to the fact that in those cases where neither the transmitter or receiver have regular telephone lines, the communication is simply electronic internet traffic over TCP/IP and may or could be classified in some cases as email and not a facsimile whatsoever. As to someone receiving any communication on a statutorily defined facsimile machine over a regular telephone line (POTS/PSTN), then yes, I could see that individual still having a case to individual private right of action depending on how the communication was transmitted. Again, we must realize that in today’s technology landscape the transmitter of the electronic message cannot control how the recipient has chosen to receive the message. So, if the sender of the message did not transmit the communication via a statutorily defined facsimile machine or device connected to a regular phone line, then their intent cannot be construed as to sending a “facsimile” and indeed their transmitting mechanism itself does not fall under the prevue of the TCPA statute.

I truly hope that the commission agrees with the Amerifactors petition and rules accordingly. I also plead that the commission waste no time and do this post haste as the current legal environment is crushing American companies on a daily basis when individuals could simply take a small amount of time and file small claims actions to get their $500-$4,500 every day if they believe the infringement to be egregious enough to do so. Also, the individual action in small claims courts would better serve the public as individuals would directly receive the penalty funds rather than lawyers. Interesting premise.

Thank you.