

REGARDING THE FCC's REQUEST FOR COMMENT:

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

I agree with Amerifactors Financial Group. My comments are below.

In the Westfax Decision, the FCC clarified that faxes transmitted by conventional fax machines that are sent using a "regular telephone line" and converted into email for recipient (efaxes) are subject to the TCPA. This Westfax decision should be overturned because the recipient incurs no TCPA specified damage components, the recipient received a simple email, void of "ANY" damage component. The FCC noted that "Efaxes, just like paper faxes, can increase labor costs for businesses, whose employees must monitor the faxes to separate unwanted from desired faxes." The FCC reasoned that efaxes are sent over "telephone lines", which satisfies the statutory requirement that the communication be a fax on the originating end." This is totally incorrect as e-faxes do not use "telephone lines" when sent. The FCC's analysis is based on if the text or images were transmitted "over a telephone line". Perhaps the FCC or Westfax assumed digital faxes are sent via "telephone lines?". Westfax actually sent most fax's through TCP/IP even 10 years ago so this reasoning may have swayed the FCC into a false determination? Regardless of the FCC's Westfax decision, faxes sent via TCP/IP or received via TCP/IP do not use a "regular telephone line" thus causing no damage components mentioned in the TCPA nor meet any of the statutory "FAX" violation requirements. The damages do not exist with sent/received efaxes as they are none and there is nothing to sift through, they are emails.

The FCC made a critical distinction that fax messages that are transmitted over the internet are not subject to the TCPA. The FCC narrowed it down even further specifically stating that "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."

It is 100% clear that the FCC should immediately release a statement that "FAXES SENT VIA THE INTERNET/TCP/IP ARE NOT SUBJECT TO THE TCPA BECAUSE THEY ARE NOT SENT USING A REGULAR TELEPHONE LINE".

The FCC's correct analysis of a fax sent via TCP/IP (internet) and not a "regular telephone line" does not violate the TCPA should be universal when evaluating how a fax is received. When a fax is received via TCP/IP not using a "regular telephone line" the statutory violation is equally void. When a fax goes directly to email there is **no statutory defined fax machine, no telephone line and no damage components. It is simply an email in your inbox.**

It is 100% clear that the FCC should immediately release a decision that "FAXES RECIEVED VIA THE INTERNET/TCP/IP ARE NOT SUBJECT TO THE TCPA BECAUSE THEY ARE RECIEVED VIA A REGULAR TELEPHONE LINE" NOR USE A FAX MACHINE DEFINED BT THE TCPA.

The Ryerson Petition addresses a similar take, but wants the FCC to clarify with a real decision not just a partial statement within the Westfax order.

In November 2015 the FCC received a petition asking the Commission to declare in a actual order that faxes that initiate in digital form using (TCP/IP) and are received in digital form (TCP/IP) do not fall within the TCPA."

The Ryerson petition simply wants a declaration in an order that Internet faxes that are both sent and or received digitally are more closely akin to emails and not statutory defined fax's and not in violation of the TCPA. The petition clearly states that Congress's created the TCPA's fax restrictions due to the costs associated with the use of fax machines, paper, toner and interrupting the phone lines. None of the damages exist with internet faxing that are sent or received via the internet thus should not be a violation of the TCPA.

The petition also states that applying the TCPA to digital fax's violate the First and Fifth Amendments. The petition also states that nothing in the express language of the TCPA or its legislative history suggests that the statute should apply to messages both initiated and received digitally over the internet, and renders the statute unconstitutionally vague.

The Amerifactors petition is overwhelmingly supported by the public both consumers and businesses. The FCC needs to declare clearly and concisely that internet sent/received faxes to not violate the TCPA.

Thanks for the opportunity to comment.

Joe