

Attention: Commissioner MICHAEL O'RIELLY and Secretary Ms. Marlene H. Dortch.

My comment in support of AMERIFACTORS FINANCIAL GROUP, LLC PETITION FOR DECLARATORY RULING

CG Docket No. 02278

CG Docket No. 05338

Here are my comments:

FAXES RECEIVED ON DEVICES OTHER THAN A "TELEPHONE FACSIMILE MACHINE" DO NOT FIT WITHIN THE PLAIN MEANING OF THE TCPA.

- The statute is clear on this point. If a device, technology or application doesn't meet the legal definition of the law, then it's not a "telephone facsimile machine". If it's not a "telephone facsimile machine" then it doesn't fall into governance of the TCPA.
- Congress was clear that other forms of communications should not be governed by the fax elements of the TCPA. Period. In the House Report and the statements of the POTAS when signing the TCPA into law, it was paramount that the application of the TCPA stay stringently focused on "telephone facsimile machines" as not to erroneously or purposely encompass other expanded forms of electronic communications. Just those that it sought to protect and thus why the strict, concise language of what constitutes a "facsimile machine".

MODERN ONLINE FAX SERVICES DO NOT FIT WITHIN THE SCOPE OF "TELEPHONE FACSIMILE MACHINE" AS DEFINED BY THE TCPA

- Modern day online fax services do not meet the strict definition of "telephone facsimile machine" according to the TCPA and a multitude of other FCC comments and declaratory rulings. They do not have the capacity to transcribe on to or from paper, nor do they do so over regular telephone lines.
- Users and recipients receiving electronic messages and attachments from online efax services do not do so over regular telephone lines, nor do they have the ready capacity to transcribe to or from paper using the online service.

THE HARMS THAT THE TCPA SOUGHT TO AVOID ARE NON-EXISTENT IN THE CONTEXT OF ONLINE FAX SERVICES

- Since there is no expensive ink, toner, paper and wear on a physical facsimile machine when using an online fax/efax service, there are no damages as outlined in the TCPA statute. The TCPA statute specifically outlined these types of advertising cost shifting as what they were trying to address. None of these exist in modern day online fax services.
- Since there are no "regular telephone lines" as well, there is no burden or harm as defined by the TCPA statute as well. No telephone lines are tied up rendering the recipient of no use of the telephone line for their purpose, etc.

In closing, if the glove does not fit, you must acquit. If the device in this case doesn't meet the legal definition of a facsimile machine using a regular telephone line, then the TCPA doesn't apply.

Respectfully,

David