

Before the  
Federal Communications Commission  
Washington, D.C.

In the matter of	)	
	)	
Rules and Regulations Implementing the	)	
Telephone Consumer Protection Act of 1991	)	CG Docket Number 02-278
	)	
Junk Fax Prevention Act of 2005	)	CG Docket Number 05-338
	)	
Petition for Expedited Declaratory Ruling of	)	
Amerifactors Financial Group, LLC	)	

REPLY COMMENTS

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## **Introduction and Summary**

These reply comments concern the Petition for Expedited Declaratory Ruling filed by Amerifactors Financial Group, LLC<sup>1</sup>, which I oppose, and specifically are in reply to the petition and to comments submitted by Cynthia Brinker<sup>2</sup>, David Cover<sup>3</sup>, WestFax, Inc.<sup>4</sup> and Mark Valencia<sup>5</sup>

At issue is whether the Telephone Consumer Protection Act of 1991 (“TCPA”) applies to fax advertisements that the recipient receives through fax services or devices other than traditional facsimile machines.

### **Faxes sent to a fax service’s computer are not without costs to the fax service and to the recipient**

In his comments Mark Valencia states “Users of online fax services do not bare any of the costs that the TCPA specifically outlines to address, so there is no harm under the TCPA.”<sup>6</sup>

Each fax sent to a fax service involves costs. The fax service must obtain telephone lines and size their equipment based, on part, on the number of faxes that the service receives. Unsolicited faxes add to this cost. That cost must, of course, be passed along to the recipient.

### **Faxes sent to a fax service are sent over regular telephone lines**

Cynthia Brinker stated in her comments that “Modern day online fax solutions are nothing more than internet based electronic message servers that take packets of TCP/IP data and move them on to their destination as either a message in an online web-portal or attachments via email.”<sup>7</sup>

According to David Cover’s comments “...nor do *they or the recipient use regular phone lines* to communicate these messages over the internet via email.”<sup>8</sup>

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<sup>1</sup> Petition for Expedited Declaratory Ruling, filed on July 13, 2017, by Amerifactors Financial Group, LLC, (“Amerifactors”) to dockets CG 02-278 and CG 05-338 (“petition”).

<sup>2</sup> Comments submitted by Cynthia Brinker to dockets CG 02-278 and CG 05-338 (“Brinker Comments”).

<sup>3</sup> Comments submitted by David Cover to dockets CG 02-278 and CG 05-338 (“Cover Comments”).

<sup>4</sup> Comments submitted by WestFax, Inc. to dockets CG 02-278 and CG 05-338 by William B. Hayes, its counsel (“WestFax Comments”).

<sup>5</sup> Comments submitted by Mark Valencia to dockets CG 02-278 and CG 05-338 (“Valencia Comments”).

<sup>6</sup> Valencia Comments.

<sup>7</sup> Brinker comments at para. 6.

<sup>8</sup> Cover Comments, emphasis added.

The fax service that I use assigned me a dedicated telephone number that is similar to other fax telephone numbers. The fax is sent from the junk fax sender to that number over a regular telephone line.

### **Faxes emailed to the recipient takes the recipients time**

According to Amerifactors petition, “Any interruption of annoyance factor associated with online fax services is no greater than a walk to the trash can to toss direct mail or the push of a button to delete an email.”<sup>9</sup>

Westfax, in its comments, stated that “Electronic facsimiles and emails do not cause any of the harm, damages and inconveniences cited by Congress when the TCPA was passed.”<sup>10</sup>

Each fax that is received on behalf of the recipient must result in an email to the recipient. The recipient must open the email to find out who it is from and if it is an unwanted commercial fax. This takes time and effort by the recipient that is even greater than the time and effort to pick up and read a fax automatically printed on paper.

### **Conclusion**

I urge the Commission to deny the petition by Amerifactors and to consider fax advertisements sent to fax machines to be covered by the TCPA even if those faxes are received by fax services and emailed to the recipient.

Respectfully submitted

/s/John A. Shaw

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<sup>9</sup> Petition at 17

<sup>10</sup> Westfax comments at comment #9.