

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of

Rules and Regulations Implementing the
Telephone Consumer Protection Act of 1991

RingCentral, Inc. Petition for Expedited
Declaratory Ruling

CG Docket No. 02-278

Reply Comments of Robert Biggerstaff

Robert Biggerstaff submits these reply comments dated September 14, 2016 on the Petition for Expedited Declaratory Ruling filed by RingCentral, Inc.¹ The Petition should be denied.

Comments of RingCentral, Inc.

RingCentral's reply comments misstate my comments. I stated:

"Unlike calls to cell phones, an advertiser cannot rely on third-party consent to send fax advertisements because the affirmative defense of "prior express invitation or permission" has additional elements that must be met for a fax to be compliant, while the "express consent" defense for robocalls only has one."

The difference is not a difference between the terms "prior express consent" versus "prior express invitation or permission." It is that with respect to faxes, there are multiple other requirements, such as proper header information and a proper opt-out notice. Getting express invitation or permission (even from a third party) does not satisfy the other requirements.

RingCentral's reply comments² seem to indicate that the "sender" of a fax must be a

¹ *RingCentral, Inc. Petition for Expedited Declaratory Ruling*, CG Docket No. 02-278, (filed July 6, 2016) ("Petition").

² Reply Comments of RingCentral, Inc., p.28.

singular entity. This is not a requirement in the rules or Commission guidance. A single fax may have multiple senders who are responsible for different content. I have seen many examples of fax advertisements that have multiple “senders” such as 1) multi-page faxes where different businesses were advertised on different pages and 2) single-page fax advertisements where multiple businesses were advertised on the same page, such as a page of 8 “coupons” for discounts at 8 different businesses.

For “consent” or “invitation or permission” to exist under the TCPA it must be express. How can consent for an advertisement for Company X be “transferred” or “relied on” by Company Z? This violates the meaning of the term “express.” This no more makes sense than giving consent to one of the 8 restaurants in the above example, would constitute “express” consent for the ads from the other 7 in the same page. To permit this would create yet another form of “piggybacking” as described in my August 28, 2016 comments.

Neither RingCentral or any other commenter has rebutted the moral hazard described in my comments, where any “approval” of a quantified amount of advertising as permitted would result in rampant exploitation of that quantitative limit. Such “piggybacking” must not be permitted.

If an advertiser relies on third-party consent, it does so at its own peril as to whether the elements of that consent are valid under the TCPA and were validly conferred. But such consent categorically does not extend to the other prongs of an advertising fax, such as a proper opt-out notice.

Thank you very much for your time considering my comments. I remain,

Sincerely

/s/ Robert Biggerstaff

Robert Biggerstaff
September 14, 2016