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October 3, 2014

*Via ECFS*

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12th Street, S.W.  
Washington, D.C. 20554

Re: Notification of Ex Parte Presentation, CG Docket Nos. 02-278  
and 05-338

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Dear Ms. Dortch:

On October 1, 2014, the following parties (collectively, “Petitioners”) met with Amy Bender, Legal Advisor to Commissioner Michael O’Rielly, and separately with Nicholas Degani, Legal Advisor to Commissioner Ajit Pai: Anda, Inc., represented by Matthew A. Brill and Matthew Murchison of Latham & Watkins LLP; Douglas Walburg, Richie Enterprises, LLC, and Futuredontics, Inc., represented by Sam Feder of Jenner & Block LLP; Staples, Inc. and Quill Corp., represented by Thomas McCarthy of Consovoy McCarthy PLLC; and Forest Pharmaceuticals, Inc., Gilead Sciences, Inc., Purdue Pharma L.P., Purdue Pharma Inc., Purdue Products L.P., Masimo Corporation, and Unique Vacations, Inc., represented by the undersigned and Michael Beder of Covington & Burling LLP. Additionally, Mr. Feder met with Matthew Berry, Chief of Staff to Commissioner Pai.

During the meetings, we reiterated arguments in support of Petitioners’ petitions seeking declaratory rulings, waivers and other relief in connection with Section 64.1200(a)(4)(iv) of the Commission’s rules, and we urged the Commission to act expeditiously on these petitions.<sup>1</sup> We

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<sup>1</sup> See, Application for Review of Anda, Inc., CG Docket Nos. 02-278, 05-338 (filed May 14, 2012); Petition of Forest Pharmaceuticals, CG Docket No. 05-338 (filed June 27, 2013); Petition of Staples, Inc. and Quill Corp., CG Docket Nos. 02-278, 05-338 (filed July 19, 2013); Petition of Gilead Sciences, Inc., CG Docket Nos. 02-278, 05-338 (filed Aug. 9, 2013); Petition of Douglas Paul Walburg et al, CG Docket Nos. 02-278, 05-338 (filed Aug. 19, 2013); Petition of Futuredontics, Inc., CG Docket Nos. 02-278-05-338 (filed Oct. 18, 2013); Purdue Pharma Petition for Declaratory Ruling Regarding the Statutory Basis for the Commission’s Opt-Out Notice Rule with Respect to Solicited Faxes ,and/or Regarding Substantial Compliance with Section 64.1200(a)(4)(iii) and (iv) of the Commission’s Rules, CG Docket Nos. 02-278, 05-338 (filed Dec. 12, 2013); Petition for Declaratory Ruling and/or Waiver of Masimo Corporation, CG (continued...)

Ms. Marlene H. Dortch

October 3, 2014

Page 2

explained that, for the reasons set forth in the petitions and in Petitioners' other filings in these proceedings,<sup>2</sup> the Commission should issue a declaratory ruling that the opt-out notice rule for solicited faxes was *ultra vires* when adopted or was not "prescribed under" Section 227(b) of the Communications Act. Alternatively, we explained that a retroactive waiver of the rule, given the circumstances and equities set forth in the petitions, would be appropriate. As Petitioners have explained in prior filings, either form of relief would be within the Commission's authority.<sup>3</sup>

We emphasized that, whatever approach the Commission chooses, it must act promptly and issue a ruling on the merits. The issues raised by the Petitioners first were presented to the Commission nearly four years ago, and the Petitioners are currently defending themselves in lawsuits that require this issue to be addressed by the Commission expeditiously and in a manner that provides Petitioners with a full and fair opportunity to defend themselves.

Please contact the undersigned if you have any questions regarding these issues.

Respectfully submitted,

/s/ Yaron Dori

Yaron Dori

cc: Amy Bender  
Nicholas Degani  
Matthew Berry

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Docket Nos. 02-278 & 05-338 (filed April 1, 2014); Petition for Declaratory Ruling and/or Waiver of Unique Vacations, Inc., CG Docket Nos. 02-278 & 05-338 (filed Aug. 20, 2014).

<sup>2</sup> See, e.g., Reply Comments of Unique Vacations, Inc., CG Docket Nos. 02-278 & 05-338 (filed Sept. 19, 2014) ("UVI Reply"); Letter of Matthew A. Brill, Counsel for Anda, Inc., to Marlene H. Dortch, Secretary, FCC, CG Docket Nos. 02-278, 05-338 (filed May 23, 2014) ("Anda May 23 Letter"); Letter of Yaron Dori and Michael Beder, Counsel to Masimo Corporation, to Marlene H. Dortch, Secretary, FCC, CG Docket Nos. 02-278, 05-338 (filed May 16, 2014); Letter of Matthew A. Brill, Counsel for Anda, Inc., to Marlene H. Dortch, Secretary, FCC, CG Docket Nos. 02-278, 05-338 (filed March 14, 2014); Reply Comments of Forest Pharmaceuticals, Gilead Sciences, and Purdue Pharma, CG Docket Nos. 02-278 & 05-338 (filed Feb. 21, 2014) ("Forest *et al.* February 2014 Reply"); Reply Comments of Douglas Paul Walburg, Richie Enterprises, LLC, and Futuredontics, Inc., CG Docket Nos. 02-278 & 05-338 (filed Feb. 21, 2014); Reply Comments of Staples, Inc. and Quill Corporation, CG Docket Nos. 02-278 & 05-338 (filed Feb. 21, 2014); Comments of Anda, Inc., CG Docket Nos. 02-278 & 05-338 (filed Feb. 14, 2014) ("Anda February 2014 Comments").

<sup>3</sup> See, e.g., UVI Reply at 5-7; Anda May 23 Letter at 1-2; Forest *et al.* February 2014 Reply at 11; Anda February 2014 Comments at 11-14. After the meeting on October 1, 2014, Mr. Brill e-mailed Mr. Degani copies of the Anda May 23 Letter and Anda February 2014 Comments.