

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Junk Fax Prevention Act of 2005)	CG Docket No. 05-338
)	
Rules and Regulations Implementing the)	CG Docket No. 02-278
Telephone Consumer Protection Act of 1991)	

**Edward Simon's Request to File Supplemental Comment on Petition for Waiver of
the Commission's Rule on Opt-Out Notices on Fax Advertisements Filed by
RadNet Management, Inc. and Its Affiliates Based on Matters *After* Simon's Original
Comment**

Scott Z. Zimmermann
Law Offices of Scott Z. Zimmermann
601 S. Figueroa St., Suite 2610
Los Angeles, CA 90017
Telephone: (213) 452-6509
Facsimile: (213) 622-2171
Email: szimm@zkcfc.com

C. Darryl Cordero
Payne & Fears LLP
801 S. Figueroa St., Suite 1150
Los Angeles, CA 90017
Telephone: (213) 439-9911
Facsimile: (213) 439-9922
Email: cdc@paynefears.com

April 15, 2015

Pursuant to CFR 47 § 1.415 (d), Edward Simon (“Simon”) hereby requests leave to file a Supplemental Comment on the Petition for Retroactive Waiver filed by RadNet Management, Inc. and its affiliates¹ (collectively, “RadNet Entities”). Simon’s proposed Supplemental Comment is attached hereto as Exhibit A.

CFR 47 § 1.415 (d) provides that an interested party may file additional comments only if “specifically requested or authorized by the Commission.” Good cause exists to permit Simon’s Supplemental Comment because it provides new evidence (the RadNet Entities’ recent discovery responses in related litigation not in existence at the time Simon filed his original Comment) that the RadNet Entities did not obtain prior express permission before sending the fax advertisements for which they seek a retroactive waiver. This is critical because the absence of prior express permission belies their requested waiver.

In neither their Petition to the Commission nor their Reply Comment did the RadNet Entities explain how, when, or what manner they supposedly obtained prior express permission.² Yet, the RadNet Entities baldly claimed that that they were “prepared to present evidence that [RadNet] did and does, in fact, only send fax advertisements to recipients who gave RadNet prior express permission to send such

¹ These affiliates were listed in Exhibit A to the Petition for Waiver.

² The RadNet Entities filed their Petition for Waiver, CG Docket Nos. 02-278 and 05-338, on January 16, 2015. Simon timely filed his Comment to the Petition on February 13, 2015. The RadNet Entities filed a Reply Comment on February 20, 2015.

faxes.”³ But the RadNet Entities later admitted that this is not the case in discovery responses in litigation brought by Simon.

Specifically, in recent responses to written discovery propounded by Simon in his class action lawsuit pending in the United States District Court for the Central District of California,⁴ RadNet Management was only able to name one company (“Pacific Coast Sports Medicine”) who supposedly consented to receive fax advertisements. Indeed, RadNet Management admitted that “Plaintiff [Simon] did not give prior express consent to be sent the facsimile identified as Exhibit 1 in Plaintiff’s Complaint.”⁵

Given that RadNet did not serve these discovery responses until March 6, 2015, Simon could not have been presented them when he filed his original Comment filed on February 13, 2015. Accordingly, the Commission should authorize Simon’s Supplemental Comment.

Dated: April 15, 2015

Respectfully submitted,

By: s/Scott Z. Zimmermann
One of the Attorneys for Edward Simon
601 S. Figueroa St., Suite 2610
Los Angeles, CA 90017
Telephone: (213) 452-6509
Facsimile: (213) 622-2171
Email: szimm@zkef.com

³ Reply Comment at 7, n. 26.

⁴ *Edward Simon, DC v. RadNet Management, Inc., et al.*, No. 2:14-cv-7997 BRO, filed September 4, 2014.

⁵ Declaration of Scott Z. Zimmermann, Exh. A (RadNet Management’s Response to Simon’s Request for Admissions (see Response No. 2)) and Exh. B (RadNet Management’s Responses to Simon’s Interrogatories), concurrently submitted herewith.

EXHIBIT "A"

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Junk Fax Prevention Act of 2005)	CG Docket No. 05-338
)	
Rules and Regulations Implementing the)	CG Docket No. 02-278
Telephone Consumer Protection Act of 1991)	

**Edward Simon's Supplemental Comment on Petition for Waiver of the
Commission's Rule on Opt-Out Notices on Fax Advertisements Filed by
RadNet Management, Inc. and Its Affiliates Based on Matters *After* Simon's Original
Comment**

Scott Z. Zimmermann
Law Offices of Scott Z. Zimmermann
601 S. Figueroa St., Suite 2610
Los Angeles, CA 90017
Telephone: (213) 452-6509
Facsimile: (213) 622-2171
Email: szimm@zkcfc.com

C. Darryl Cordero
Payne & Fears LLP
801 S. Figueroa St., Suite 1150
Los Angeles, CA 90017
Telephone: (213) 439-9911
Facsimile: (213) 439-9922
Email: cdc@paynefears.com

April 15, 2015

Edward Simon (“Simon”) submits this Supplemental Comment on the Petition for Retroactive Waiver filed by RadNet Management, Inc. and its affiliates¹ (collectively, “RadNet Entities”) to notify the Commission of critical new developments that have transpired since Simon filed his Comment to the petition on February 13, 2015.²

Neither in their Petition nor in their Reply Comment did the RadNet Entities show or explain how, when or in what manner they, or any of them, obtained prior express permission from recipients of their faxes. Simon explained in his Comment that none of the RadNet Entities can maintain, consistent with the TCPA and Commission rules, that they sent fax ads to Simon or any other recipient with their prior express permission.³ As part of their Reply Comment, the RadNet Entities claimed that they were “prepared to present evidence that [RadNet] did and does, in fact, only send fax advertisements to recipients who gave RadNet prior express permission to send such faxes.”⁴

Simon hereby reports that RadNet Management’s responses to written discovery propounded by Simon in his class action lawsuit pending in the United States District Court for the Central District of California⁵ contradict this claim. Given that RadNet did

¹ These affiliates were listed in Exhibit A to the Petition for Waiver.

² The RadNet Entities filed its Petition for Waiver, CG Docket Nos. 02-278 and 05-338, on January 16, 2015. Simon timely filed his Comment to the Petition on February 13, 2015. The RadNet Entities filed a Reply Comment on February 20, 2015.

³ Simon Comment at 20-22.

⁴ Reply Comment at 7, n. 26.

⁵ *Edward Simon, DC v. RadNet Management, Inc., et al.*, No. 2:14-cv-7997 BRO, filed September 4, 2014.

not serve these discovery responses until March 6, 2015, Simon could not have been presented them in connection with his original Comment.

In response to Simon's Request for Admission No. 2, RadNet admitted that "Plaintiff [Simon] did not give prior express consent to be sent the facsimile identified as Exhibit 1 in Plaintiff's Complaint."⁶ In its sworn answer to Simon's Interrogatory No. 4, which asked RadNet to identify each person it contends gave prior express permission, it identified only "Pacific Coast Sports Medicine"—it did not identify Simon or any other class member.⁷

Accordingly, the RadNet Entities cannot maintain, consistent with the TCPA and Commission rules, that they sent fax ads to Simon or any other recipient with their prior express permission, except for the possibility of one company. This alone precludes the waiver they request or should limit the waiver to "Pacific Coast Sports Medicine."

Dated: April 15, 2015

Respectfully submitted,

By: s/Scott Z. Zimmermann

One of the Attorneys for
Edward Simon
601 S. Figueroa St., Suite 2610
Los Angeles, CA 90017
Telephone: (213) 452-6509
Facsimile: (213) 622-2171
Email: szimm@zkcfc.com

⁶ Declaration of Scott Z. Zimmermann ("Zimmermann Decl."), Exh. A (RadNet Management's Response to Simon's Request for Admissions), submitted concurrently herewith.

⁷ Zimmermann Decl., Exh. B (RadNet Management's Responses to Simon's Interrogatories).

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF ORANGE

At the time of service, I was over 18 years of age and **not a party to this action**. I am employed in the County of Orange, State of California. My business address is 4 Park Plaza, Suite 1100, Irvine, CA 92614.

On April 15, 2015, I served true copies of the following document(s) described as **Edward Simon's Request to File Supplemental Comment on Petition for Waiver of the Commission's Rule on Opt-Out Notices on Fax Advertisements Filed by RadNet Management, Inc. and Its Affiliates Based on Matters After Simon's Original Comment and on the interested parties in this action as follows:**

Stuart M. Richter, Esq.
Andrew J. Demko
James E. Payer
KATTEN MUCHIN ROSENMAN LLP
2029 Century Park East, Suite 2600
Los Angeles, CA 90067-3012
Tel: (310) 788-7700
Fax: (310) 788-4471

Attorneys for Defendants
RadNet Management, Inc.; RadNet, Inc.;
Beverly Radiology Medical Group III;
Pronet Imaging Medical Group, Inc.;
Breastlink Medical Group, Inc.; and
Beverly Radiology Medical Group, Inc.

BY MAIL: I enclosed the document(s) in a sealed envelope or package addressed to the persons at the addresses listed in the Service List and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with Payne & Fears LLP's practice for collecting and processing correspondence for mailing. On the same day that the correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Executed on April 15, 2015, at Irvine, California.



Matthew K. Brown, Esq.