

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

In the matter of,

Petition for Waiver of  
Key Health Group, Inc.;  
Key Health Medical Solutions, Inc.;  
Key Health Management, Inc.;  
MedLegal Solutions, Inc.; and  
Key Health Medical Solutions of Nevada, Inc.

CG Docket No. 02-278

CG Docket No. 05-338

**PETITION FOR WAIVER**

Pursuant to Section 1.3 of the Federal Communications Commission’s (“FCC” or the “Commission”) regulations, 47 C.F.R. § 1.3, Key Health Group, Inc., Key Health Medical Solutions, Inc., Key Health Management, Inc., MedLegal Solutions, Inc. and Key Health Medical Solutions of Nevada, Inc. (“Petitioners” or “Key Health”) respectfully request that the Commission grant Petitioners a retroactive waiver of Section 64.1200(a)(4)(iv) of the Commission’s regulations, 47 C.F.R. § 64.1200(a)(4)(iv) (the “Opt-Out Rule”) with respect to any facsimile advertisements that may have been transmitted by or on behalf of Petitioners prior to April 30, 2015.

This request for waiver is being submitted pursuant to the Commission’s recent Fax Order<sup>1</sup> granting numerous retroactive waivers of the Opt-Rule and inviting “similarly situated parties” to seek waivers.<sup>2</sup> As the Commission has already determined that good cause exists for

---

<sup>1</sup> Order, FCC 14-164, ¶ 30 (released Oct. 30, 2014) (“*Fax Order*”)

<sup>2</sup> See *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991; Junk Fax Prevention Act of 2005; Application for Review filed by Anda, Inc.; Petition for Declaratory Ruling, Waiver, and/or Rulemaking Regarding the Commission’s Opt-Out Requirement for Faxes Sent with the Recipient’s Prior Express Permission*, CG Docket No. 02-278, 05-338.

such retroactive waiver requests and grant of the waiver would serve the public interest, Petitioners respectfully request that the Commission expeditiously grant its petition for waiver.<sup>3</sup>

## **I. BACKGROUND**

Since 1996, Key Health has been the national leader in providing personal injury medical lien funding. Key Health is headquartered in Westlake Village, CA and provides funding services throughout the U.S. Key Health funds thousands of medical accounts receivable each month from medical providers spanning the U.S. These providers offer services to injured victims on a lien or letter of protection basis as part of a personal injury claim. All providers are independent and have no ownership stake in Key Health. Medical providers assign the personal injury accounts receivable to Key Health who then maintains the accounts until case resolution. Key Health communicates with the patient's attorney for payment of the incurred medical charges at settlement. On occasion, Petitioners (or those acting on their behalf) may have provided important information about their services via facsimile to customers and valued partners who consented to receive such communications.

The Telephone Consumer Protection Act of 1991 (“TCPA”) prohibits the use of a fax machine to send an “unsolicited advertisement.”<sup>4</sup> In 2005, Congress enacted the Junk Fax Prevention Act to “require the sender of an *unsolicited* fax advertisement to provide specified notice and contact information on the fax that allows recipients to ‘opt out’ of any future fax transmissions from the sender.”<sup>5</sup> Therefore, Petitioners did not believe that any of its solicited facsimiles required opt-out notices (assuming such facsimiles could be deemed “advertisements”

---

<sup>3</sup> See *Fax Order* at ¶122; see also *WAIT Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969).

<sup>4</sup> Pub. L. No. 102-243, 105 Stat. 2394, *codified* at 47 U.S.C. § 227.

<sup>5</sup> 47 C.F.R. § 64.1200(a)(4)(iv) (emphasis added); see also Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, Junk Fax Prevention Act of 2005, CG Docket Nos. 02-278, 05-338, Report and Order and Third Order on Reconsideration, 21 FCC Rcd 3787, fn. 154 (“*Junk Fax Order*”) (2006) (stating that “the opt-out notice requirement only applies to communications that constitute *unsolicited* advertisements” (emphasis added)).

in the first place). However, as a consequence of this regulatory uncertainty, Petitioners—like so many other companies—is concerned that it could one day face significant liability due to opportunistic plaintiffs seeking to capitalize on this uncertainty by bringing a lawsuit under the TCPA.<sup>6</sup>

**II. GOOD CAUSE EXISTS TO GRANT THE PETITION AND PETITIONERS ARE SIMILARLY SITUATED.**

By this filing, Petitioners seek only to obtain the same retroactive waiver of the Opt-Out Rule that the Commission granted to multiple petitioners in the Fax Order. As the Commission concluded in the Fax Order, good cause exists for a retroactive waiver of the Opt-Out Rule insofar as it relates to the failure to comply with the Opt-Out Rule’s opt-out notice requirements for facsimile transmissions sent with the prior express invitation or permission of recipients.<sup>7</sup>

The Commission recognized that this good cause is based, first, on the “inconsistency” between a footnote to the Junk Fax Order and the Opt-Out Rule. The Commission stated that this inconsistency has “caused confusion or misplaced confidence” regarding the applicability of the Opt-Out Rule to facsimiles sent with prior express permission.<sup>8</sup> This acknowledged inconsistency has contributed to substantial uncertainty surrounding the opt-out notice requirements for *solicited* fax advertisements.

Like the petitioners granted retroactive waivers in the Fax Order, there is “nothing in the record here demonstrating that the petitioners understood that they did, in fact, have to comply with the opt-out notice requirement for fax ads sent with prior express permission but nonetheless failed to do so.”<sup>9</sup> As a “similarly situated party” (*i.e.*, an entity that may have sent

---

<sup>6</sup> Key Health Medical Solutions, Inc. was named in one such TCPA lawsuit that was voluntarily dismissed.

<sup>7</sup> *Fax Order* at ¶ 22

<sup>8</sup> *Junk Fax Order* at fn. 154; *see also Fax Order* at ¶ 24.

<sup>9</sup> *Fax Order* at ¶ 26.

solicited fax advertisements that may have lacked the required opt-out notice), good cause exists to resolve this inconsistency by granting Petitioners' request for a retroactive waiver.

### **III. PETITIONERS' WAIVER REQUEST IS IN THE PUBLIC INTEREST.**

Granting the retroactive waiver request would also be in the public interest. Petitioners note that the Commission has already decided that such retroactive waivers will serve the public interest because the "confusion or misplaced confidence . . . left some businesses potentially subject to significant damage awards" and that "on balance . . . it serves the public interest . . . to grant a retroactive waiver to ensure that any such confusion did not result in inadvertent violations of this requirement while retaining the protections afforded by the rule going forward."<sup>10</sup> Based on this finding, the FCC granted a retroactive waiver to all of the petitioners explicitly referenced in the Fax Order and further invited other "similarly situated parties" to seek retroactive waivers as well.<sup>11</sup>

The FCC's rationale in granting retroactive waivers to the petitioners referenced above applies equally to Petitioners because the uncertainty surrounding the Opt-Out Rule has the potential to expose it to frivolous litigation and significant monetary damage awards. The Commission has acknowledged that substantial confusion previously existed with respect to the opt-out requirements for solicited fax advertisements. Thus, not only does good cause exist to grant Petitioners a waiver of the Opt-Out Rule, but such a grant would be in the public interest.

### **III. CONCLUSION**

For the foregoing reasons, Petitioners respectfully request that the Commission grant their request for a retroactive waiver of 47 C.F.R. §64.1200(a)(4)(iv) for any solicited fax advertisement sent by on or on behalf of Petitioners.

---

<sup>10</sup> *Fax Order* at ¶27.

<sup>11</sup> *Id.* at ¶30.

Dated: April 30, 2015

By: /s/Christine M. Reilly

Christine M. Reilly  
Partner & Co-Chair  
TCPA Compliance and Class Action Defense

MANATT, PHELPS & PHILLIPS, LLP  
11355 West Olympic Boulevard  
Los Angeles, CA 90064-1614  
(310) 312-4000

Counsel for Petitioners