



PUBLIC NOTICE

Federal Communications Commission
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DA 15-1348

November 24, 2015

**CONSUMER AND GOVERNMENTAL AFFAIRS BUREAU SEEKS COMMENT ON A
PETITION FOR DECLARATORY RULING FILED BY JOSEPH T. RYERSON & SON,
INC.**

CG Docket No. 02-278
CG Docket No. 05-338

Comment Date: December 8, 2015

Reply Comment Date: December 15, 2015

With this Public Notice, we seek comment on a Petition for Declaratory Ruling filed by Joseph T. Ryerson & Son, Inc. (Ryerson).¹ Ryerson requests that the Federal Communications Commission (Commission) declare that faxes both initiated and received in digital form are beyond the Telephone Consumer Protection Act's (TCPA) coverage (including restrictions on certain unsolicited faxes).² Ryerson contends that such transmissions should instead be governed by the Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003 (CAN-SPAM Act).³

In its petition, Ryerson states that faxes that initiate in digital form and are received in digital form are more closely akin to email, which are governed by the CAN-SPAM Act, than to traditional faxes, which are governed by the TCPA.⁴ Ryerson asserts that the TCPA should only apply to messages initiated by a fax machine over telephone lines on the originating end.⁵ In support of its position, Ryerson contends that because no paper, ink, or toner are used in the transmissions at issue and the recipient's phone lines are not tied up during transmission such that incoming or outgoing calls cannot be completed, these transmissions should be treated like emails and not faxes.⁶ Ryerson further contends that the declaratory ruling it seeks is consistent with recent Bureau precedent.⁷

¹ Petition of Joseph T. Ryerson & Son, Inc. for Declaratory Ruling, CG Docket Nos. 02-278, 05-338 (filed Nov. 3, 2015) (Petition).

² *Petition* at 2. The TCPA is codified at 47 U.S.C. § 227. The Commission's implementing rules are codified at 47 C.F.R. § 64.1200. Among other things, the TCPA and the related rules prohibit the use of a "telephone facsimile machine, computer, or other device" to send an unsolicited advertisement to a telephone facsimile machine. 47 U.S.C. § 227(b)(1)(C); 47 C.F.R. § 64.1200(a)(4).

³ *See Petition* at 2. The CAN-SPAM Act is codified at 15 U.S.C. § 7701. The Commission's implementing rules are codified at 47 C.F.R. § 64.3100.

⁴ *See Petition* at 2.

⁵ *See id.* at 6.

⁶ *See id.* at 3-4.

⁷ *See id.* at 2. Ryerson maintains that its position is supported by *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*; *Junk Fax Protection Act of 2005*; *Petition of Westfax, Inc. for*

(continued...)

We seek comment on these and any other issues raised in the *Petition*.

Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR §§ 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). *See* Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121 (1998).

- Electronic Filers: Comments may be filed electronically using the Internet by accessing ECFS: <http://fjallfoss.fcc.gov/ecfs2/>.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing.
- Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., SW, Room TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW, Washington DC 20554.

People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer and Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

The proceeding this Notice initiates shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.⁸ Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment

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Consideration and Clarification, CG Docket Nos. 02-278, 05-338, Declaratory Ruling, 30 FCC Rcd 8620 (CGB 2015).

⁸ 47 C.F.R. §§ 1.1200 *et seq.*

filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

FOR FURTHER INFORMATION CONTACT: Rebecca A. Hirselj, Consumer and Governmental Affairs Bureau, Federal Communications Commission, (202) 418-7603; or Rebecca.Hirselj@fcc.gov.

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