COMMENT ON A PETITION FOR DECLARATORY RULING FILED BY JOSEPH T. RYERSON & SON, INC.
CG Docket No. 02-278
CG Docket No. 05-338

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.

I respectfully disagree with the Ryerson petition. Even faxes that initiate in digital form and are received in digital form can burden the recipient with unwanted costs unilaterally imposed upon them by the sender. For example, I received many of my faxes electronically. Nonetheless, to be able to receive these faxes, I must subscribe to a software package that has the requisite capabilities to receive such faxes and convert them into an email message--email packages do not do that. That software package has a monthly charge to receive a limited number of faxes, and additional faxes over that limit are additionally charged to me. I also must have a telephone line assigned to me upon which I will receive these faxes. Thus, exactly like traditional faxes, the sender and advertiser is transferring the cost of their advertising to me as a recipient of their unwanted fax--whether it ultimately shows up in my email or not. In my case, the marginal cost of receiving a fax in digital form is actually higher than my marginal cost of receiving a paper fax. And, like paper faxes, receiving a fax created in a digital form creates exactly the same conflict in the use of my fax line as it would if the fax was sent traditionally.

Further, for me to be able to stop this unwanted cost shifting, I must have all the same protections as are provided in the TCPA. I need to have protections against the faxes being sent to me in the first place, and I need adequate provisions to be able to identify the sender and opt out of future faxes.

My experience shows that faxes that initiate in digital form and are received in digital
form are exactly like faxes initiated and received in a traditional manner. Specifically, my experience shows there is even greater cost shifting to the recipient in the case of faxes received in digital form. So, such faxes deserve and demand at least the protections included in the TCPA.

The Ryerson petition should be denied; it is just another effort to create an exception in the TCPA that would burden the recipient of such faxes with shifting the cost of advertising from the sender to the recipient while invading the privacy of the recipient.

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