

Before the Federal Communications Commission, Washington, D.C. 20554

Comments on: Joseph T. Ryerson & Son Petition For Declaratory Ruling

Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991 #02-278
and the Junk Fax Protection Act of 2005 #05-338

Comments of Johnnie Daciolas

BACKGROUND

“In 1991, Congress enacted the TCPA in an effort to address certain calling and faxing practices thought to be an invasion of consumer privacy and a risk to public safety.² In relevant part, the TCPA prohibits the use of any telephone fax machine, computer, or other device to send an “unsolicited advertisement” to a telephone fax machine.³ In 1992, the Commission adopted rules implementing the TCPA, including restrictions on the transmission of unsolicited fax advertisements by fax machines.^{4”}¹

TALKING POINTS

On the surface or at first glance, it is easy to come to the conclusion that if someone receives a communication via their e-mail inbox, then quite simply, they received an e-mail. This seems plain and simple and no one would consider it a fax. Likewise, if a recipient received a facsimile on their fax machine in printed format on some form of paper, they received a fax, not an e-mail. Again, this appears to be a plain and simple interpretation.

The waters get a bit muddier when you take into account that technology today allows for conversions back and forth between many different forms of communication, protocols and technology. For example, technology solutions like “Skype” can convert a internet based TCP/IP voice call on one end, into a analog telephone conversation via a ten digit DID on the other end of the communication. Also, technology exists that can take electronic documents that were originally photos, images, or electronically created and convert them to audible speech on the receiving end of the communication (think Siri on iOS reading an email or book to you).

A fax being sent from a facsimile machine over a traditional POTS or PSTN telephone line can be converted to an electronic document within a smartphone application like Doximity, which caters to the Healthcare industry.

One could go on and on with examples but the fact is there are literally thousands of technology applications and solutions that can cross convert various communications formats.

¹ FCC DA15-977 Declaratory Ruling in the Matter of Westfax, Inc. Petition for Consideration and Clarification, Adopted/Released Aug. 28, 2015. *See id.* at 2.

² *See* 47 U.S.C. § 227.

³ *Id.* § 227(b)(1)(C).

⁴ *See Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CC Docket No. 92-90, Report and Order, 7 FCC Rcd 8752 (1992) (1992 TCPA Order); *see also* 47 C.F.R. § 64.1200(a)(3).

In the end, we must all understand that a sender can transmit a document or communication in just about any format (paper facsimile, e-mail, spoken recording, etc.) and have said communication converted into any other multitude of communications formats (paper based facsimile, e-mail, spoken recording, social media message).

With that understanding, we must come to the conclusion that only when a communication message was transmitted via a facsimile machine/system via a telephone line as statutorily defined⁵ AND received by a facsimile machine/system via a telephone line as statutorily defined⁵, can the communication be considered a “FACSIMILE or FAX” as intended by the TCPA and JFPA and thus governed as such.

Likewise, with this understanding, we must also acknowledge that only when a communication message leverages SMTP and is received via a e-mail system based on SMTP (simple mail transport protocol), can we consider the communication message an e-mail and thus governed as such under the CAN-SPAM act.

From a review of the Ryerson petition for declaratory ruling, it appears that the communication message/s in question leveraged SMTP and thus would fall under the definition of an e-mail and be governed as such under the CAN-SPAM act.

Thank you for your time in reviewing my comment.

Johnnie Daciolas

⁵ See 47 C.F.R. § 64.1200(f)(13)