

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

Reply Comments of Johnnie Daciolas Supporting the Ryerson Petition

TCPA and FCC rulings have clarified that fax advertising must be sent and received by “regular telephone lines” (POTS or PSTN). We cannot expect the TCPA act to regulate the sending of data via the Internet (TCP/IP) or email over the Internet (SMTP). TCPA guidelines supported by the recent “Westfax” ruling clearly outline what the law defines as a violation. We cannot continue to go with the status quo of “Don’t bother me with facts. We’ve already made up our mind on this issue” as technology has re-defined many of the underpinnings of those decisions years ago.

Let’s familiarize the difference between Analog (regular telephone lines) and Digital (Internet):

Analog technology is simply the process by which the technology takes an audio, video, text etc and translates it into electronic pulses (the human voice being transmitted over the phone, for instance). This is known as a “**regular telephone line**” (**POTS or PSTN**), these lines are supported by standard phones, fax machines and modems, etc. This was the technology utilized almost exclusively to send fax’s up until approximately 2009. TCPA law and rulings were all based on “regular telephone line” technology, because it was the only technology that existed.

Digital (Internet TCP/IP) technology breaks down audio, video, text etc into binary code – essentially, a code comprised of 1s and 0s. Once translated into binary code, the signal gets transferred via the **Internet (TCP/IP)** protocol. Digital provides a greater level of security when engaged in transmission – that is, the binary code can easily set up an encryption while transmitting to ensure that your transmission is not compromised, thus the healthcare industry has moved to digital almost exclusively. Digital (TCP/IP) transmissions surpassed the use of analog (regular telephone line, POTS/PSTN) in the 2012-2014 timeframe.

Summary Analog VS Digital Transmission:

Analog = “Regular telephone line” (POTS or PSTN)

Digital = “Internet (TCP/IP)”

The difference is simple to understand. One uses a “regular telephone technology”, one uses the “internet”. Vastly different technologies as “regular telephone line” technology can incur costs and ring busy.

Typically 10 years ago a piece of paper was scanned by a facsimile machine and transcribed into digital form and sent through a “**telephone line**” (**POTS/PSTN**). Today most transcribed transmissions are sent and received via the **internet (TCP/IP)** protocol that does not travel down the path of a “regular telephone line”. Every petitioner has used the same Internet TCP/IP to transmit their petition to the FCC;

do we consider it a FAX? NO. If the petitioner's sent their petition from their computer to any address, digit address, email or any TCP/IP connected address is that a fax? NO. Likewise if it is received via TCP/IP, is that a fax? NO.

An efax/email-fax or any advertisement sent via internet (TCP/IP) do not utilize a "regular telephone line"(POTS/PSTN), so any argument regarding "sent" or "received" have already been clarified by TCPA and the FCC. Both "sent" and "received" must be by "regular telephone line", period.

Quoted from an objector of the Ryerson petition on 12/09/15:

*"Third, under the TCPA, only the receiving device has to have the "capacity" to use a "regular" telephone line and to print a fax. The sending device can be anything within "facsimile machine, computer, or other device." **The sending device has no requirement that it have "capacity" to use a "regular" telephone line, ergo whatever type of line was used for sending is irrelevant.**"*

The objector seems to be at odds with the TCPA statutory definitions and the FCC's own ruling on Westfax. The pathways/line is the "**relevant**" issue, that's why we are here. FCC quotes in the Westfax ruling:

*"The Commission's rules define "**telephone facsimile machine**" to mean "equipment which has the capacity to transcribe text or images, or both, from paper into an electronic signal and to **transmit that signal over a regular telephone line**, or to transcribe text or images (or both) from an electronic signal **received over a regular telephone line onto paper.**"*

If the transmission is not sent by "regular telephone line" and received by "regular telephone line" and then "onto paper", what is the controversy? There is NONE.

We have to be factually accurate and focus on the ruling, clearly stating "*transmit that signal **over a regular telephone line**, or to transcribe text or images (or both) from an electronic signal **received over a regular telephone line onto paper.**"*

If Ryerson's content was originated and transmitted via digital transmissions as defined above and not a "**regular telephone line**" the FCC must either give waivers to exclude any efares/email-fax, or Internet TCP/IP transmitted data sent or received, or simply rule that these communications do not meet the statutory definition of a facsimile governed by the TCPA.

The FCC is VERY clear that the TCPA guidelines state that efares sent by "a regular telephone line" are subject to TCPA. A fax sent by Email or internet "– IS NOT SUBJECT TO THE TCPA".

*"Efares are sent as a fax over a telephone line to a telephone facsimile machine and are thus subject to TCPA and the Commission's rules. By contrast, a fax sent as an email over the Internet – e.g., a fax attached to an email message or a fax whose content has been pasted into an email message – **is not subject to the TCPA.**"*

Examining the "**2009**" Westfax ruling we can take it a step further. Westfax actually did use telephone lines to transmit some data 7 years ago. Many of today's internet fax technology does not use "**regular phone lines**" to send or receive.

The FCC was wise to make this determination. Why?

1. "Telephone Lines" (POTS/PSTN) are 100% occupied during a transmission like a fax.
2. "Telephone Lines" (POTS/PSTN) are necessary if the recipient uses a traditional "facsimile machine".
3. The FCC technology experts already considered that the quickly advancing "internet" technology landscape would eliminate facsimile machines using "regular telephone lines" and thus intentionally limited the TCPA statutory definition of a facsimile machine to mean only devices directly capable of using a "regular telephone line".

Closing: In just a few years it's highly likely "facsimile machines" using "regular phone lines" will be non-existent as well as households having "regular telephone lines". Fax machines using telephone lines are fast becoming a thing of the past and have been for at least the last 7 years, much like "dial-up internet modems" using "regular telephone lines". At most efax/email fax or internet advertising should be considered spam governed by email regulations like CAN-SPAM. If the FCC defines any content originating it's transmission over the Internet or received by any unique identifier via the Internet protocol, a statutory defined FAX, it would be declaring that there is no difference between the Internet and regular telephone service. At that point, any and all Internet based communication would have the potential for being defined as a "FAX" and subject to the TCPA. Again, emails are not telephone calls, Twitter messages are not "faxes" and "faxes over regular telephone lines" are not text messages. TCPA governance must to stay within the legal statutory definitions of a "facsimile", it's as simple as that.

Thank you for your time in reviewing my reply comments.

Johnnie Daciolas

Today's most common way to Fax, Efax, Email-Fax

Standard Computer or any equipment connected to the internet sending a transmission (not connected to a phone line, never using the pathway of a telephone line)



The Internet (TCP/IP)



Standard Computer or any equipment connected to the internet receiving transmission (not connected to a phone line, never using the pathway of a telephone line)



Internet transmissions not subject to TCPA

A efax/email-fax etc never touches a regular phone line (POTS) as defined by "WESTFAX" FCC Ruling and TCPA statutory definition.

Second most common way to Fax, Efax, Email-Fax

Standard Computer or any equipment connected to a "regular telephone line"



Public Switched Telephone Network (POTS) "Regular Telephone Line"

The Internet (TCP/IP)



Standard Computer or any equipment connected to the internet receiving transmission (not connected to a phone line,



Not subject to TCPA, transmission was NOT received over the "telephone line"

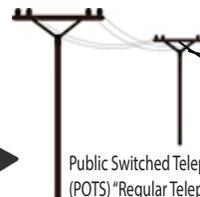
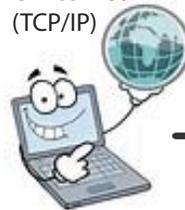
Sent via "standard telephone line" (POTS) and then received via internet (TCP/IP)

Third most common way to Fax, Efax, Email-Fax

Standard Computer or any equipment connected to the internet sending a transmission (not connected to a phone line, never using the pathway of a telephone line)

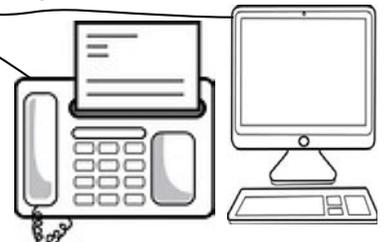


The Internet (TCP/IP)



Public Switched Telephone Network (POTS) "Regular Telephone Line"

Standard Computer or any equipment connected to a "regular telephone line"



Not subject to TCPA, transmission did not send using a "telephone line"

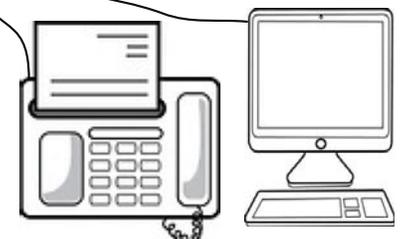
Sent via Internet (TCP/IP) and some telecommunications convert the internet sent data to travel down the path of a telephone line "standard telephone line" (POTS)

Standard Computer or any equipment connected to a "regular telephone line"



Public Switched Telephone Network (POTS) "Regular Telephone Line"

Standard Computer or any equipment connected to a "regular telephone line"



VIOLATION, subject to TCPA!

Sent via "standard telephone line" (POTS) and then received via "STANDARD TELEPHONE LINE" (POTS) (Both)