

REPLY TO COMMENTS SUPPORTING THE PETITION FOR DECLARATORY RULING FILED BY JOSEPH T. RYERSON & SON, INC.

CG Docket No. 02-278

CG Docket No. 05-338

Supporters of the Ryerson Petition continue to argue that unsolicited and unwanted faxes sent and received digitally be treated like SPAM (under the CAN-SPAM Act) rather than like TCPA violations.

First, I believe Mr. Biggerstaff's analysis of this petition is correct and these are faxes (not emails) as defined in the TCPA.

Second, the CAN-SPAM act should properly be named the "I CAN SPAM AS MUCH AS I WANT WITHOUT FEAR OF PENALTIES". It is clear that the goal of petitioners is to be able similarly to send junk faxes without any real fear of penalties or enforcement. This would be a violation both of the content and spirit of the TCPA.

The CAN-SPAM Act would effectively remove any penalties for these unsolicited and unwanted faxes because CAN-SPAM limits standing to governmental and regulatory bodies, but provides a limited private right of action to a class of plaintiffs it terms Internet access services ("IASs"). The term "Internet access service" is statutorily defined as "a service that enables users to access content, information, electronic mail, or other services offered over the Internet, and may also include access to proprietary content, information, and other services as part of a package of services offered to consumers."

Thus, consumers would have no ability to take effective action to stop the offending junk faxes using CAN-SPAM.

As previously stated in my comment, 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.

Further, Ryerson suggests (in their Reply Comments) that services for free efax reception (the only specifically mentioned service is www.faxbetter.com) somehow erases the problem. But that is not the case, as I'm sure Ryerson realizes. First, the receiving entity would have to change their fax number to the one provided by Faxbetter, and that would of necessity have to be the only fax number of the person/company, or else Ryerson and other fax blasters would "discover" the real fax number and inundate that number with junk faxes.

A quick examination of the Faxbetter website shows that it too must be a paid service to be useful. For example, The free service does not permit sending faxes, is limited to receiving 20 faxes per month, and all subsequent faxes are simply electronically discarded. This is clearly not a viable service even for an

individual, let alone a company. So, if you have a real faxing need, with Faxbetter you must step up to a paid service that has a fixed monthly fee for the first bucket of faxes, and an incremental charge of \$.06/page (which, by the way, is billed at \$15 for the first page that exceeds the "first bucket"). So this service, given as an example by Ryerson, is not "Free" and, in fact has a marginal cost per fax that exceeds the cost of ink and paper in a traditional fax.

The real lesson in this is that Ryerson is being disingenuous in proffering this solution while obscuring the cost of this solution.

In choosing to send the junk fax messages in a format specified for Fax machines and in not knowing how that fax will be received by the recipient, Ryerson is clearly intending that the fax be received—likely by a conventional fax machine.

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.