

April 11, 2016

Ms. Cathy Williams
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554
Via email: PRA@fcc.gov, Cathy.Williams@fcc.gov

Re: Docket No. OMB-3060-1088, Information Collection Being Reviewed by the Federal Communications Commission

On behalf of the more than 6,000 members of the American Road and Transportation Builders Association (ARTBA), we respectfully offer comments on the February 10 *Federal Register* notice of information collection regarding the Federal Communications Commission's (FCC) Order on Reconsideration 08-239 regarding the Junk Fax Prevention Act (JFPA).

ARTBA's membership includes private and public sector members that are integral to the planning, designing, construction and maintenance of the nation's roadways, waterways, bridges, ports, airports, rail and transit systems. Our industry generates more than \$380 billion annually in U.S. economic activity and sustains more than 3.3 million American jobs. ARTBA and its member companies rely on facsimile communications for correspondence in their daily business activities.

The JFPA was originally created to reduce unwanted fax communications by imposing civil penalties on senders of "junk" faxes. One of the motives behind the JFPA was to alleviate the financial burden associated with receiving "junk" faxes due to the expense of specialized paper for fax machines. However, since the passage of the JFPA, technology has enabled fax messages to be sent via email and for fax machines to use lower-cost, regular paper. The JFPA has also spawned a "cottage industry" of attorneys solely focused on using the act to file lawsuits against private employers.

Under the JFPA, simple possession of a "junk" fax is enough to initiate a lawsuit. "Junk" fax attorneys will routinely solicit businesses for their unrequested fax communications and file multiple lawsuits at one time. Often times the business does not know who is being sued or even that lawsuits are being filed in their name. Due to the cost of actually appearing in court being far lower than settling a "junk" fax case, employers will often choose to pay "junk" fax attorneys thousands of dollars in order to dismiss a lawsuit.

While ARTBA appreciates the intent of the JFPA to help prevent unwanted fax messages, the current implementation of the law places a number of burdensome restrictions on the ability of non-profit trade associations to communicate directly with their members. In the past, the JFPA has been used by "junk" fax practitioners in a manner which prevents ARTBA from being able



to provide services and information that our members have come to expect and rely upon. Conveying information to individuals that voluntarily chose to join an organization is one of the core missions of trade associations. This includes not only informational updates on relevant legislative and regulatory matters, but also information on association products and services for which members are eligible.

To this end, ARTBA agrees with FCC's Order on Reconsideration, which clarifies three important areas of the Junk Fax Prevention Act:

- Fax numbers are presumed to be available for public distribution so long as they are obtained from the recipient's own directory, advertisement or website;
- Means other than direct contact may be used to verify that a fax number is available for public distribution (such as an internet search); and
- A description of the required "opt-out" mechanism on the sender's website is sufficient to satisfy the requirements of the JFPA.

ARTBA also would note that the federal CAN-SPAM Act, which regulates email (a far more prevalent form of communication than fax), does not allow the opportunities for frivolous, time-consuming litigation contained in the JFPA. ARTBA urges the FCC to continue to clarify and modernize the JFPA so that the act can better serve its goal of reducing unwarranted fax communications without being a tool for attorneys to use to harass associations and employers communicating with their members and customers.

Sincerely,



T. Peter Ruane
President & C.E.O.