

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

In the Matter of)	
)	
Rules and Regulations Implementing the)	CG Docket No. 02-278
Telephone Consumer Protection Act of 1991)	
)	
)	

Petition For Reconsideration From Scholastic Inc.

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I. Summary

Scholastic Inc. (“Scholastic”) respectfully submits this Petition For Reconsideration to request the Federal Communications Commission (“Commission”) to reconsider its position concerning the elimination of an established business relationship (“EBR”) exemption to the restrictions imposed upon unsolicited fax advertisements set forth in the Report and Order released July 3, 2003 in the above-referenced docket FCC 02-278 (“the Rules”).

II. Background

On December 9, 2003 Scholastic submitted comments to the Commission in response to the Notice of Proposed Rulemaking (“NPRM”) in the above-referenced docket FCC 02-278 (the “Comments”). In such Comments, Scholastic requested, among other things, that the EBR remain in effect as an exemption to the restrictions that may be imposed on unsolicited fax advertisements. Scholastic’s Comments specifically responded to the Commission’s question of whether the Commission should amend its rules to expressly incorporate the effective EBR exemption to the restriction on unsolicited fax advertisements. From the phrasing of such question, Scholastic incorrectly believed that such EBR would remain in effect and therefore only briefly commented on such issue in the Comments. However, since the Rules unexpectedly contained the explicit provision that such EBR be eliminated, Scholastic respectfully requests the Commission to re-establish such EBR so that Scholastic’s school customers may continue to receive the valuable faxes that they not only want to receive, but also expect to receive, due to our longstanding valued and mutually beneficial relationship between our existing school customers and Scholastic.

III. Establish An EBR Exemption To Unsolicited Fax Advertisements

As more fully set forth in Scholastic's Comments, Scholastic is an 83 year old company whose corporate mission is to instill a love of reading and learning in children. In fiscal year 2001, Scholastic distributed more than 320 million children's books in the U.S. Scholastic uses the fax machine, among other methods, to effectively communicate with our school and library customers and enable access to such books and other educational materials.

More specifically, Scholastic uses the fax machine to: 1) send its existing customers at schools offers for low cost books and educational materials (see Attachment A); 2) provide its customers with order forms in response to requests by phone (see Attachment B); 3) provide responses to other requests about a product, service or customer service information, e.g., a potential customer may call us and request via fax information about our product READ 180. (see Attachment C). For more than a decade, Scholastic has been sending more than 150,000 "unsolicited faxed advertisements" annually to schools and libraries, and less than 1% of those recipients have asked Scholastic to stop sending such faxes. This is not surprising. In fact, this insignificant number of complaints supports the Commission's findings that "a solicitation to someone with whom a prior business relationship exists does not adversely affect subscriber privacy interests," and could be "deemed to be invited or permitted by a subscriber in light of the business relationship."¹ Our customers want us to communicate with them by fax because it is effective.²

The new requirement in Section 185 of the Rules to obtain written consent for unsolicited fax advertisements even where an EBR exists³ will be burdensome on our school customers and ineffective. Because our school customers expect us to fax to them, they may not understand that without written consent, we will not be able to continue to fax to them. Moreover, even potential school customers who call or fax us with a request for information via fax, will expect us to be able to fax to them, without having to obtain written consent. Consequently, this new requirement is overly burdensome for the goal of trying to protect consumers from unwanted faxes. The unintended negative consequences of this new requirement will be felt by: 1) consumers, who will lose an effective mechanism to receive valuable offers, place orders and communicate with Scholastic; 2) Scholastic, who will lose sales and an effective low cost means to communicate with its school customers; and 3) children, who will lose access to low cost books and educational software.

¹ Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, Report and Order, 7 FCC Red 8752 at ¶34 (1992).

² In a quantitative survey conducted by Scholastic in March of 2002, 80% of school secretaries polled stated that faxing was an effective means to communicate with school principals.

³ The Rules at Section 189.

This new requirement could easily be more narrowly tailored by providing an EBR exemption and requiring senders to provide recipients with a phone number to opt-out of receiving future faxes⁴. The EBR was defined by the Commission as “a prior or existing relationship formed by a voluntary two-way communication between a person or entity and a residential subscriber with or without an exchange of consideration, on the basis of an inquiry, application, purchase or transaction by the residential subscriber regarding products or services offered by such person or entity, which relationship has not been previously terminated by either party.”⁵ The Commission should adopt a similar reasonable EBR exemption to the unsolicited fax advertisement regulations in order to provide customers with: 1) the timely convenience of faxed communications about new products and special offering; 2) response to one time requests for information about Scholastic’s products and services; and 3) customer service assistance. The addition of an EBR exemption to the new requirement of written consent for unsolicited fax advertisements will not only not negatively effect the goal of protecting consumers from unwanted faxes, but it will enable consumers and businesses to continue to receive the faxes that they expect to receive and rely upon.

If customers do not want to receive communications from us by fax, a requirement of providing recipients with an EBR with a phone number to opt out, can effectively and narrowly eliminate the burden of receiving unwanted faxes.

If you have any questions or would like more details regarding us, our customers or our faxing practices, please feel free to contact us.

Respectfully submitted,

SCHOLASTIC INC.

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⁴ Scholastic currently maintains a Do Not Fax database.

⁵ 47 C.F.R. § 64.1200(f)(4).

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Attachment B

See hard copy filed.

Attachment C

See hard copy filed.