

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20580

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

YELLOW PAGES INTEGRATED MEDIA ASSOCIATION
PETITION FOR RECONSIDERATION

The Yellow Pages Integrated Media Association (Yellow Pages I.M.A.)¹ hereby seeks, pursuant to section 1.429 of the Commission's rules (47 C.F.R. Sec. 1.429), reconsideration of certain aspects of the Commission's recent decision² regarding established business relationship and prior consent for facsimile solicitations, and the ability of a trade association to send facsimile solicitations to its own members. Yellow Pages I.M.A. believes that the new unsolicited facsimile advertisement rules are overly broad, extremely burdensome and onerous, and will potentially interrupt business commerce in unintended ways. Existing business relationships should continue to be exempt from these requirements, or at the very least remain viable for business-to-business transactions, and the need for written prior approval must be severely narrowed.

¹ The Yellow Pages I.M.A., formerly the Yellow Pages Publishers Association, is a global trade association based in Berkeley Heights, New Jersey, representing the Yellow Pages industry, both print and electronic. Yellow Pages I.M.A. members include publishers (of both Yellow and White Pages) and other businesses associated with the Yellow Pages industry.

² In the Matter of Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, GN Docket 02-278, Report and Order, adopted June 26, 2003.

Existing Business Relationship and Prior Consent

Yellow Pages I.M.A. is concerned about the changes to the existing business relationship rules that prohibit facsimile solicitation without prior written consent. In the Report and Order, the Commission reverses its early decision that an established business relationship provides implied consent to receive facsimile solicitation. The Commission, however, cites no change or law or circumstance to justify this 180-degree policy about-face. The Commission puts no evidence in the record that facsimile solicitations from companies with an established business relationship have become more prevalent, or more unwanted, than when the Commission adopted its original rule. In fact, with the advent and popularity of e-mail and the Internet, Yellow Pages I.M.A. speculates that, while facsimile is still a popular way to conduct business,³ the amount of unsolicited facsimile advertisements has probably not increased significantly since the FCC's initial rules took effect more than ten years ago. The discussion surrounding the rules changes instated by the Commission is primarily about the complaints of consumers, consumer advocates, the receipt of faxes sent from a commercial enterprise to private consumers, and the untargeted delivery of vast numbers of faxes. There is little indication that the problems that may pervade this arena exist in the business-to-business arena as well, yet the same prescription is adopted, without adequate explanation for this drastic alteration in the way America does business.

³ For example, a directory publisher will fax a mock-up of a Yellow Pages advertisement to an existing or potential customer along with a rate quote. This will almost always take place either after a conversation with the customer, or as part of a customer's yearly renewal. Under the new rules, additional burdens, such as obtaining signed, written permission from the customer before sending a fax, will make this transaction much more time consuming, costly, and inconvenient.

If the Commission is going to make that significant a policy change, there must be compelling reason to change. The Commission, however, has given no compelling reason for its decision to significantly alter its rules.

The Commission actually put a double-whammy on companies that do business via facsimile by first, ending the established business relationship exemption, and then requiring written permission to send a facsimile. The Commission did not even mention the possibility of requiring written permission prior to sending a solicitation via fax in its Notice of Proposed Rulemaking, which is one of the reasons many businesses were taken by surprise.

The practical effects of these changes can be significant to the Yellow Pages industry. For example, a plumber with an advertisement in the Verizon Northern Virginia Yellow Pages is contacted by a Verizon Yellow Pages salesperson about taking out an ad in the District of Columbia Yellow Pages. The plumber then asks the salesperson to fax her a proposal with pricing. Under our reading of the new rules, the salesperson would have to obtain *written* permission from the plumber before faxing a proposal, even though the plumber just requested the proposal. This additional step of obtaining written permission will make the transaction significantly more burdensome, wasting the time of both the advertiser and the directory publisher, and possibly resulting in the loss of the sale.

The rule is also vague as to what would constitute a solicitation. Under the old rules for established business relationships, companies could send facsimiles to existing customers without prior express consent. Directory companies often distribute new studies that come out showing the effectiveness of Yellow Pages advertising in the customer's particular field or geographic area. Although such a study is not a solicitation to buy advertising, it does speak to the quality and value of advertising in the Yellow Pages, and would likely be defined as an

“unsolicited advertisement” under the Commission’s rules. To obtain written permission of all the various advertisers and potential advertisers who may find this information of value would be burdensome, at best, and impossible, at worst. The idea of stopping the free flow of information is an anathema to the business community.

While conspicuous complaints have arisen against the use of broadcast or fax blasting techniques, the rules proposed by the Commission are overly broad in that they inhibit meaningful business communications on a one-on-one basis. A commercial customer, with whom a business has an existing business relationship, has the capability to request that future fax deliveries be terminated, and any business choosing not to respect that desire would certainly face the prospect of alienating those customers, and losing their business. Should a current customer, upon receiving a fax wish to terminate further transmissions, the Commission can certainly mandate that “Do Not Fax” requests be respected under threat of substantial fines.

Yellow Pages I.M.A.’s members publish more than 6,500 unique directories. In an industry as visually dependent as the Yellow Pages, the vast majority of whose customers are small businesses, the hindrance associated with obtaining written prior authorization will be profound. Each year, the industry deals with more than 3.6 million small businesses, many of who are existing customers. The inability of each of our thousands of sales representatives to share, with customers with whom they have had a lengthy relationship, items such as marketing information, sales proposals, or new product ideas without obtaining prior written permission, is an unfortunate result of a poorly articulated regulatory philosophy. At any given time, one sales representative is dealing with one specific customer. The purported dangers cited by the commission for instituting these rules simply do not exist in the type of relationship just described. An existing business-to-business relationship, in which fax broadcasting and/or

blasting are not utilized, should remain exempt from the requirement for prior written authorization.

The Yellow Pages I.M.A. requests that the Commission reconsider its rules and retain the exemption for established business relationships. Yellow Pages I.M.A. requests that the Commission reconsider its decision and clarify its rules in 47 C.F.R. Sec. 1200(a)(3)(i) to state that oral permission be acceptable for sending any facsimile solicitation.⁴ Yellow Pages I.M.A. also requests that the Commission amend the definition of unsolicited advertisement to not include information about or pertaining to a product or service the customer has purchased within the past three years.

Communications Among Members of a Trade Association

The Commission's conclusion that a trade association must obtain written permission from its members to send a facsimile significantly changes the way trade associations operate. Often, a trade association, such as the Yellow Pages I.M.A. will send out updates to its members by mail, fax and e-mail. Such updates may contain a number of different items, including listing new publications for sale by the association, announcements that association members can purchase a booth at the upcoming convention, or simply promotion for a meeting or convention. Under the FCC's new rules, faxing this information will now be illegal without the express written consent of each and every member receiving this information. Trade associations would either have to stop using the fax a communications method, not mention anything a member could possibly want to purchase or attend in communications to members, or obtain written permission for each and every member to send facsimiles that may contain a solicitation.

This burden is completely unnecessary. If a member does not want to receive trade association publications, the member can request that the association stop sending these items. The goal of a trade association is to help its members, not burden or offend them. If an association continues to send solicitations to a member after a member has request that the solicitations cease, the member may simply leave the association. At that point, the implied consent of being a member of an association is revoked.

The Yellow Pages I.M.A. hereby requests that the Commission amend its rules to state that there is an implied consent for a trade association to send solicitations pertaining to the trade association and its members via facsimile.

Conclusion

The Commission should be applauded for efforts to curb unsolicited mass faxes. On the other hand, the rules must still permit legitimate business to be conducted using the fax machine without significant additional burdens. Yellow Pages I.M.A. believes that the law of unintended consequences has come into play, and the Commission's rules will have the unintentional effect of curbing legitimate and wanted business communications. For the foregoing reasons, Yellow Pages I.M.A. urges the Commission to reconsider its decision as detailed above in this filing.

⁴ In the alternative, Yellow Pages I.M.A. requests that the Commission amend its rules to state that oral permission is acceptable for sending a facsimile solicitation to anyone with whom the sender has an established business relationship.