

**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  
OF FACSIMILE ADVERTISEMENT RULES  
SUBMITTED BY  
THE CHAMBER OF COMMERCE OF THE UNITED STATES  
THE ASSOCIATED GENERAL CONTRACTORS OF AMERICA  
THE COMMUNITY ASSOCIATIONS INSTITUTE  
THE CREDIT UNION NATIONAL ASSOCIATION  
THE NATIONAL ASSOCIATION OF MANUFACTURERS  
THE NATIONAL ASSOCIATION OF WHOLESALER-DISTRIBUTORS  
THE NATIONAL GROCERS ASSOCIATION  
THE NATIONAL RESTAURANT ASSOCIATION  
AND  
THE NATIONAL FEDERATION OF INDEPENDENT BUSINESS**

Jan Witold Baran, Esq.  
John F. Kamp, Esq.  
WILEY REIN & FIELDING LLP  
1776 K Street, N.W.  
Washington, DC 20006  
202-719-7000

Stephen A. Bokat, Esq.  
Ellen Dunham Bryant, Esq.  
Chamber of Commerce of the United States

August 25, 2003

## TABLE OF CONTENTS

I.	INTRODUCTION AND SUMMARY.....	2
II.	AFFECTED PARTIES WERE NOT GIVEN ADEQUATE PUBLIC NOTICE OF THE RULE CHANGES ULTIMATELY ADOPTED IN THE <i>REPORT AND ORDER</i> .....	7
III.	THE FCC'S <i>REPORT AND ORDER</i> DOES NOT COMPLY WITH THE REGULATORY FLEXIBILITY ACT OF 1980 (THE "RFA") .....	10
IV.	THE COMMISSION EXCEEDED THE AUTHORITY GRANTED TO IT BY CONGRESS UNDER THE TCPA .....	11
V.	THE REVISIONS TO THE FACSIMILE ADVERTISEMENT RULES ADOPTED BY THE FCC VIOLATE AFFECTED PARTIES' FIRST AMENDMENT RIGHTS.....	11
VI.	CONCLUSION.....	16
	DISCUSSIONS BY THE JOINT PETITIONERS OF THE IMPACT THE REVISED FACSIMILE ADVERTISING RULES WOULD HAVE ON THEIR BUSINESS OPERATIONS IF ALLOWED TO GO INTO EFFECT .....	ATTACHMENT A

**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  
OF FACSIMILE ADVERTISEMENT RULES  
SUBMITTED BY  
THE CHAMBER OF COMMERCE OF THE UNITED STATES  
THE ASSOCIATED GENERAL CONTRACTORS OF AMERICA  
THE COMMUNITY ASSOCIATIONS INSTITUTE  
THE CREDIT UNION NATIONAL ASSOCIATION  
THE NATIONAL ASSOCIATION OF MANUFACTURERS  
THE NATIONAL ASSOCIATION OF WHOLESALER-DISTRIBUTORS  
THE NATIONAL GROCERS ASSOCIATION  
THE NATIONAL RESTAURANT ASSOCIATION  
AND  
THE NATIONAL FEDERATION OF INDEPENDENT BUSINESS**

The Chamber of Commerce of the United States (“Chamber of Commerce” or “Chamber”), the Associated General Contractors of America (“AGC”), the Community Associations Institute (“CAI”), the Credit Union National Association (“CUNA”), the National Association of Manufacturers (“NAM”), the National Association of Wholesaler-Distributors (“NAW”), the National Restaurant Association (“NRA”), the National Grocers Association (“N.G.A.”), and the National Federation of Independent Business (“NFIB”) (collectively, the “Joint Petitioners”) hereby submit to the Federal Communications Commission (“FCC” or “Commission”) this petition for reconsideration of certain rules the agency recently adopted in the above-captioned proceeding.<sup>1</sup> Specifically, the Joint Petitioners respectfully urge the

---

<sup>1</sup> See *In the Matter of Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Report and Order, FCC 03-153 (rel. July 3, 2003) (hereinafter *Report and Order*); see also *In the Matter of Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Order on Reconsideration, FCC 03-

Commission to reconsider and revise its determinations that: (1) an existing business relationship will no longer be sufficient under the FCC's rules implementing the Telephone Consumer Protection Act of 1991 ("TCPA") to show that an individual or business has given express permission to receive unsolicited facsimile advertisements; (2) a signed, written statement that includes the facsimile number to which any advertisements may be sent will be required to indicate that the recipient has granted the sender prior express invitation or permission to deliver the advertisement; and (3) where recognized, an "existing business relationship" will expire 18 months after the recipient's last transaction or three months after the last inquiry.

## **I. INTRODUCTION AND SUMMARY**

The Commission's new unsolicited commercial fax rules require that prior express, written, signed permission must be obtained before sending any unsolicited commercial facsimile transmission to any person. This consent must include the specific fax number(s) to which faxes may be sent. Perhaps most important to the business community, the Commission without clear notice abandoned the established business relationship exception that exempted established business fax practices. Indeed, without this notice, the FCC could not have fully considered the broad scope and application of the rules, the direct and indirect costs of business compliance, and the possible dampening effect on the U.S. economy. Accordingly, the FCC violated the fundamental 'notice and comment' requirements of the Administrative Procedure Act and failed to engage in reasoned decision-making because there is no record basis for the new rule. Similarly, the record is inadequate to meet the mandates of the Regulatory Flexibility

---

208 (rel. Aug. 18, 2003) (in which the FCC (1) extended, on the Commission's own motion, the effective date of its determination that an "established business relationship" will no longer be sufficient to show that an individual or business has given express permission to receive unsolicited facsimile advertisements, and (2) modified the definition of "established business relationship" employed for purposes of the facsimile advertisement rules).

Act and the First Amendment, and does not enable an adequate review by the Office of Management and Budget under the Paperwork Reduction Act. Furthermore, the FCC's new fax rules exceed its authority under the TCPA.

Moreover, as a policy matter, the Commission needs to understand fully the impact of these rules before proceeding. Many business members already have provided the FCC with specific, tangible examples of the serious disruptions of their usual business practices with customers, clients and business partners that would occur if the rule were to go into effect. Indeed, one day after the Chamber informed its members of the new rule, more than 200 wrote individual letters to FCC officials protesting the rule change and demonstrating how the new regulations would be highly disruptive of well-established business operations. Accordingly, several of the Joint Petitioners and several other industry groups petitioned the Commission to stay the implementation of the revised fax rules so such ramifications could be considered. To date, the Chamber alone knows that over 1,000 letters already have been sent to the FCC, and that over 3,000 letters have been sent to Members of Congress and federal government officials. These letters, combined with the narratives in *Attachment A* provided by members of the Joint Petitioner organizations, provide reliable evidence of the perhaps unintentional – but nonetheless devastating – effect that allowing the revised rules to go into effect would have on American businesses, both small and large.

Many businesses indicated the multitude of uses they make of facsimile communications to better serve their customers and to receive information about products and services from their suppliers. In addition, businesses – in part relying over the last decade upon the “safe harbor” of the “existing business relationship” exception to the facsimile advertisement rules – have altered fundamentally the ways in which they market and provide service to their customers. Face-to-face sales forces have been replaced to a significant degree with less costly and faster approaches

that utilize telecommunications facilities, including facsimile machines – thereby improving efficiency, which, in turn, has helped drive growth in the U.S. economy. In fact, companies have invested billions of dollars in equipment purchases, installation, and maintenance, long-term telecommunications service contracts, employee training, and other associated costs – expenditures that would not have been borne were it not for the “existing business relationship” exception. Moreover, although letters from businesses recognize that there can and should be tougher enforcement of existing law, most already make concerted efforts to remove from their fax lists anyone who asks them, because doing so is good business practice. Many expressed reactions ranging from confusion to anger that the proposed restrictions seem to ignore generally accepted, appropriate business practices. Others found the new rule impossibly complicated and vague, making compliance uncertain at best. In sum, Joint Petitioners trust that once the Commission develops a full record – and thereby gains an understanding of the ramifications of the new rules – it will reconsider and reverse itself.

\* \* \*

Together, the Joint Petitioners represent millions of U.S. businesses that depend on the ability to send faxes to their existing customers and interested potential customers. The following is a description of each of the Joint Petitioners:

The Chamber is the world’s largest business federation, representing an underlying membership of over three million businesses and organizations of every size and in every industry sector and geographic region of the country, including 3,000,000 businesses, 3,000 state and local chambers, 830 business associations, and 92 American Chambers of Commerce abroad. Members of the Chamber of Commerce include businesses of all sizes and sectors, including large Fortune 500 companies as well as home-based, one-person operations. The

Chamber of Commerce and its members use facsimiles to communicate effectively amongst each other, as well as with other businesses, business associations and existing consumers.

AGC is the largest and oldest of the national trade associations in the construction industry. AGC was founded in 1918 at the express request of President Woodrow Wilson. Today, AGC has more than 33,000 members and 103 chapters throughout the United States. Among AGC's members are more than 7,000 of the nation's leading general contractors, more than 12,000 specialty contractors, and more than 14,000 material suppliers and service providers to the construction industry. These firms engage in the construction of commercial buildings, shopping centers, factories, warehouses, highways, bridges, tunnels, airports, water works facilities and multi-family housing units. AGC members also prepare sites and install utilities for housing development. Among the thousands of projects that AGC members construct each year are the nation's largest and most complex.

CAI is a national non-profit research and education organization formed in 1973 by the Urban Land Institute and the National Association of Home Builders to provide the most effective guidance for the creation and operation of condominiums, cooperatives, homeowner associations, and planned communities. CAI represents more than 16,000 homeowners, community associations, community managers and affiliated professionals and service providers. CAI estimates that there are approximately 50 million Americans living in approximately 250,000 community associations.

CUNA, based in Washington, DC and Madison, Wisconsin, is the national trade association serving over 90 percent of America's 10,000 federal and state chartered credit unions. In partnership with state credit union leagues and other parties, CUNA provides many services to credit unions, including representation, information, public relations, continuing professional education, and business development.

NAM is the nation's largest industrial trade association. The NAM represents 14,000 members (including 10,000 small and medium companies) and 350 member associations serving manufacturers and employees in every industrial sector and all 50 states. Headquartered in Washington, D.C., the NAM has 10 additional offices across the country.

NAW represents wholesaler-distributors of virtually every product sold to industrial, commercial, contractor, institutional and retail customers. NAW's membership covers some 40,000 companies with 150,000 places of business – a significant portion of the nation's \$2.8 trillion per year merchant wholesale distribution industry.

NRA is the leading business association for the restaurant industry, which is comprised of 870,000 restaurant and foodservice outlets employing 11.7 million people. NRA has 60,000 member companies and represents more than 300,000 restaurant establishments. Its membership base consists of virtually every facet of the industry.

N.G.A. is the national trade association representing the retail and wholesale grocers that comprise the independent sector of the food distribution industry. An independent retailer is a privately owned or controlled food retail company operating in a variety of formats. Most independent operators are serviced by wholesaler-distributors, while others may be partially or fully self-distributing. Some are publicly traded but with controlling shares held by the family and others are employee owned. Independents are the true "entrepreneurs" of the grocery industry and dedicated to their customers, associates, and communities. N.G.A. members include over 1,500 retail and wholesale grocers, state grocers associations, as well as associate manufacturers and service suppliers.

NFIB is the largest advocacy organization representing small and independent businesses in Washington, D.C. and all 50 state capitals. NFIB's purpose is to influence public policy at the state and federal level and be the resource for small and independent business in America. The

approximately 600,000 members of NFIB own a wide variety of America's independent businesses, from pizza parlors to hardware stores. For many of these businesses, the ability to fax information to their established customers is an essential commercial tool.

## **II. AFFECTED PARTIES WERE NOT GIVEN ADEQUATE PUBLIC NOTICE OF THE RULE CHANGES ULTIMATELY ADOPTED IN THE *REPORT AND ORDER***

Section 553 of the Administrative Procedure Act (“APA”)<sup>2</sup> requires the FCC both to give adequate public notice and to base its decisions on record evidence. For example, under the APA the FCC is required to include in any notice of proposed rule making “either the terms or substance of the proposed rule or a description of the subjects and issues involved.”<sup>3</sup> In addition, Section 553 states that the FCC “shall give interested persons an opportunity to participate in the rule making through submission of written data, views, or arguments with or without opportunity for oral presentation.”<sup>4</sup> General notice to review a rule, however, does not give an agency the authority to impose new, specific affirmative obligations on an industry.<sup>5</sup>

In the instant proceeding, a single paragraph in the *Notice of Proposed Rulemaking* sought comment on the FCC’s “determination that a prior business relationship ... establishes the requisite consent to receive telephone facsimile advertisement transmissions.” Nothing therein suggested or revealed in any way that the FCC was contemplating making a dramatic

---

<sup>2</sup> 5 U.S.C. § 553.

<sup>3</sup> 5 U.S.C. § 553(b)(3).

<sup>4</sup> 5 U.S.C. § 553(c). *See generally Asiana Airlines v. FAA*, 134 F.3d 393, 396 (D.C. Cir. 1998) (holding that rule-making proceedings conducted under Section 553 of the APA “must provide both notice and meaningful opportunity to comment”) (citation omitted); *see also National Black Media Coalition v. FCC*, 791 F.2d 1016, 1022 (2d Cir. 1986) (“We hold that, in failing to provide notice of its decision to abandon its minority preference policy, the FCC did not comply with the notice provision of the Administrative Procedure Act.”).

<sup>5</sup> *See, e.g., Wagner Elec. Corp. v. Volpe*, 446 F. 2d 1013 (3d Cir. 1972) (holding that notice that Department of Transportation intended to modify rules governing *testing* of turn signals and hazard lights was not adequate to justify *modifications of performance and durability standards* applicable to turn signals and hazard lights) (emphasis added).

change to its existing regulations and imposing an onerous requirement that literally all persons and firms seek and obtain written and signed consent, limited to those identified fax number(s) identified in the consent form, before sending *any* commercial message by facsimile. Nor was notice given that businesses would be prohibited from sending faxes when customers or prospects specifically ask them to do so in a face-to-face conversation, telephone, web site, email, etc.<sup>6</sup> This absurd outcome directly contradicts the TCPA's goal of empowering consumers regarding which faxes they do and do not receive, and further underscores the need for further FCC consideration.

Separately, the record – essential for reasoned decision-making – that was compiled in this proceeding is incomplete and inadequate under existing administrative law precedent to support such amendments. Thus, the newly revised fax rules are unlikely to withstand judicial scrutiny.<sup>7</sup> Accordingly, the FCC must, at a minimum, reconsider its decision to adopt such rules at this time, and issue a notice of proposed rule making in which its proposals are set forth in sufficient detail to allow interested parties to provide meaningful comment.

*Attachment A* includes a number of examples provided by the Joint Petitioners of how these revised rules, if allowed to go into effect, would interfere with well-established business practices. The purpose of these narratives is to describe the grave and extensive disruption of a broad range of sectors of the U.S. economy that would result from permitting these revised rules

---

<sup>6</sup> See *In the Matter of Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Notice of Proposed Rulemaking and Memorandum Opinion and Order, FCC 02-250, at ¶ 39 (rel. Sept. 18, 2002).

<sup>7</sup> FCC decisions must be “the product of reasoned decisionmaking.” See *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 52 (1983); see also *id.* at 43 (holding that an agency must “examine the relevant data and articulate a satisfactory explanation for its action including a rational connection between the facts found and the choice made”); *MCI Telecomms. Corp. v. FCC*, 143 F.3d 606, 607 (D.C. Cir. 1998); *Ill. Pub. Telecomms. Ass'n v. FCC*, 117 F.3d 555, 558 (D.C. Cir. 1997); *NAACP v. FCC*, 682 F.2d 993, 997 (D.C. Cir. 1982) (a reviewing court must not only “ensure that the agency’s decision is not contrary to law,” but also must make certain that the decision “is rational” and “based on a consideration of the relevant factors”).

to go into effect.<sup>8</sup> Of course, if the Joint Petitioners had been given adequate notice of the amendments to the facsimile advertisement rules that the Commission intended to make, these discussions already would be included in the record.

Instead, however, the *Report and Order* bases these radical and surprising revisions upon a number of conclusory – and, in many cases, unsupported – statements, including the following:

- “Faxed advertisements also have proliferated, as facsimile service providers (or “fax broadcasters”) enable sellers to send advertisements to multiple destinations at relatively little cost;”<sup>9</sup>
- “The record indicates that some consumers feel ‘besieged’ by unsolicited faxes;”<sup>10</sup> and
- “*We believe* that even small businesses may *easily* obtain permission from existing customers who agree to receive faxed advertising, when customers patronize their stores or provide their contact information.”<sup>11</sup>

Such assertions are insufficient to demonstrate that the rules that have been in effect for over ten years are inadequate to address the problem of unwanted facsimile advertisements. They certainly are not enough to support the rules adopted in the *Report and Order*. In sum, if the Commission expects that any such rules will withstand judicial review, it must base them upon a full and complete record that adequately describes not only the costs of unsolicited commercial faxes, but also the impact that those rules will have on a vast number of sectors of the U.S. economy.

---

<sup>8</sup> For example, the focus of the AGC’s narrative in *Attachment A – i.e.*, the construction industry – alone accounts for more than 700,000 businesses and 6.6 million jobs. See U.S. Census Bureau data from *Statistics of U.S. Business, 2000*, posted by the U.S. Small Business Administration, Office of Advocacy, available at <<http://www.sba.gov/advo/stats/data.html#us>>. In 2002, the value of construction put in place totaled \$860 billion. See U.S. Census Bureau, *Value of Construction Put in Place*, available at <<http://www.census.gov/const/C30/Total.pdf>>.

<sup>9</sup> *Report and Order* at ¶ 8.

<sup>10</sup> *Report and Order* at ¶ 186 (citation omitted).

<sup>11</sup> *Report and Order* at ¶ 191 (emphasis added).

### **III. THE FCC'S *REPORT AND ORDER* DOES NOT COMPLY WITH THE REGULATORY FLEXIBILITY ACT OF 1980 (THE "RFA")**

As noted by the Office of Advocacy of the U.S. Small Business Administration,<sup>12</sup> “[b]oth the [Commission’s] initial regulatory flexibility analysis (“IRFA”) and the final regulatory flexibility analysis (“FRFA”) do not satisfy the requirements of the RFA as they failed to address the costs that the rule would impose upon small business, small trade associations, membership organizations, and small non-profit organizations.”<sup>13</sup> The Office of Advocacy delineates a number of inconsistencies between the Commission’s actions and the RFA, including the following:

- “The IRFA does not describe the requirement to obtain signed written permission from all fax recipients;”<sup>14</sup>
- The IRFA “does not adequately estimate the costs on small businesses or small organizations;”<sup>15</sup>
- “[T]he FCC did not consider alternatives to minimize the significant economic impact on small businesses and small organizations as required by the RFA;”<sup>16</sup> and
- “[T]he FRFA does not meet the requirements of the RFA, as it does not contain an analysis of the compliance costs of the Order.”<sup>17</sup>

The failure of the newly adopted rules to comply with various requirements imposed by the RFA provides yet another basis upon which the Commission should determine to vacate those rules and – if it does not decide simply to reinstate the prior rules, as the Joint Petitioners strongly recommend – at a minimum, issue a new notice of proposed rulemaking that complies with the

---

<sup>12</sup> The Office of Advocacy of the U.S. Small Business Administration *ex parte* notice, CG Docket No. 02-278 (filed Aug. 14, 2003).

<sup>13</sup> *Id.* at 4.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

regulatory flexibility analysis requirements of the RFA. In short, the Joint Petitioners believe that the RFA imposes a significant, independent responsibility on the FCC to develop an adequate record of the necessity of the paperwork requirements and the cost of the paperwork burden on business before allowing the revised fax rules to go into effect.

#### **IV. THE COMMISSION EXCEEDED THE AUTHORITY GRANTED TO IT BY CONGRESS UNDER THE TCPA**

As the FCC notes in the *Report and Order*, “[t]he TCPA prohibits the use of any telephone facsimile machine, computer or other device to send an ‘unsolicited advertisement’ to a telephone facsimile machine. An unsolicited advertisement is defined as ‘any material advertising the commercial availability or quality of any property, goods, or services which is transmitted to any person *without that person’s prior express invitation or permission.*”<sup>18</sup> As noted by the Newspaper Association of America and National Newspaper Association in their *Petition for Stay*, however, the TCPA does *not* require that an entity seeking to send a commercial facsimile obtain written consent before it does so.<sup>19</sup> Consequently, the Commission, by eliminating the “prior business relationship” exception to its rules and imposing a requirement that written consent be obtained before any commercial facsimile is transmitted, has overstepped the authority delegated to it by Congress under the TCPA.

#### **V. THE REVISIONS TO THE FACSIMILE ADVERTISEMENT RULES ADOPTED BY THE FCC VIOLATE AFFECTED PARTIES’ FIRST AMENDMENT RIGHTS**

The Commission’s new and highly circumscribed “existing business relationship” exception to the broad fax prohibition suffers from numerous constitutional infirmities. This section is devoted primarily to revealing the flaws that a reviewing court would find in

---

<sup>18</sup> *Report and Order* at ¶ 185 (citations omitted) (emphasis added).

<sup>19</sup> Newspaper Association of America and National Newspaper Association *Petition for Stay*, CG Docket No. 02-278, at 2 (filed Aug. 8, 2003).

employing the “intermediate” standard of scrutiny accorded to commercial speech restrictions. The Commission should note, however, that its new restriction even captures fully protected political speech—such as that engaged in by the Chamber and its members in discussing developments that affect their joint interests and political strategies for addressing them. In this regard, the revised business exemption would be subject to the most exacting degree of court scrutiny,<sup>20</sup> and plainly would fail.

Yet even with respect to commercial speech, the courts have grown increasingly sensitive to the need to protect speakers and listeners from unnecessary or overly intrusive government regulation. The Supreme Court set forth the heightened standard of review applicable to commercial speech restraints in *Central Hudson Gas & Electric Corp. v. Public Service Commission*: Unless the speech pertains to illegal activity or is inherently misleading, commercial speech regulation is permissible only when it advances a “substantial” government interest and only then if “the regulation directly advances the government interest asserted” and is “not more extensive than is necessary to serve that interest.”<sup>21</sup> As the regulator here, the FCC bears a real burden in establishing that its speech restriction survives *Central Hudson* scrutiny<sup>22</sup>—a burden that the Supreme Court has held is “not satisfied by mere speculation or conjecture.”<sup>23</sup> The discussion below demonstrates that the revised business exemption fails all three substantive prongs of the test—and therefore would be rejected by a reviewing court on any one of these bases.

---

<sup>20</sup> See, e.g., *Buckley v. Valeo*, 442 U.S. 1 (1976).

<sup>21</sup> *Central Hudson Gas & Electric Corporation v. Public Service Commission of New York*, 447 U.S.557, 566 (1980).

<sup>22</sup> See, e.g., *Bolger v. Youngs Drug Products Corp.*, 463 U.S. 60, 70 n.20 (“The party seeking to uphold a restriction on commercial speech carries the burden of justifying it.”).

<sup>23</sup> *Edenfield v. Fane*, 507 U.S. 761, 770-71 (1993).

The first substantive prong of *Central Hudson* requires that the FCC “demonstrate that the harms it recites are *real*.”<sup>24</sup> With respect to the revised business exemption, the agency appears to have misidentified the harm at issue here. The harm is *not* some generalized privacy concern that may be raised in connection with an unsolicited fax sent by a stranger. That harm, to the degree it exists, is addressed by the general ban. What is at issue here is whether there is any demonstrated harm traceable to faxes sent in compliance with the existing business exemption that would require narrowing of the exemption. The record is devoid of any evidence that recipients—particularly businesses—are suffering harm by virtue of receiving faxes from commercial entities with which they have existing relationships. It is not surprising, perhaps, that the necessary evidence is lacking, for as noted above, the FCC failed to provide proper notice of the action it subsequently took. Because the agency did not frame the issue clearly, it did not ask the questions needed to determine whether there is a problem with the operation of the business exemption in its original form. Consequently, the Commission has nothing to show, other than “speculation or conjecture,” that any harm is occurring.

Accordingly, because the FCC does not know whether the perceived harm is “real” or, if real, the exact dimensions of it, the agency cannot show that the revised business exemption “directly advances” the goal of preventing it.

The second substantive prong of *Central Hudson* also requires precision: the Commission must be able to demonstrate that the narrower business exemption “will *in fact* alleviate [the asserted harm] to a *material* degree.”<sup>25</sup> Mere assertion of laudable but generic public interest goals is not sufficient to create the nexus. Rather, the FCC must muster some

---

<sup>24</sup> *Edenfield v. Fane*, 507 U.S. 761, 770-71 (1993).

<sup>25</sup> *Id.* at 770-71 (emphasis added); *accord Rubin v. Coors Brewing Co.*, 514 U.S. 476, 486-87 (1995); *Ibanez v. Fla. Dep’t of Bus. & Prof’l Regulation*, 512 U.S. 136, 143 (1994).

facts to support the need for employing this particular new restraint on protected commercial speech: “A regulation cannot be sustained if it provides only ineffective or remote support for the government’s purpose or if there is little chance that the restriction will advance the State’s goal.”<sup>26</sup> Here, where there is no evidence to show that faxes sent in compliance with the original business exemption imposed any real harm, it is perforce impossible for the FCC to meet its constitutional burden. The Commission cannot say that its new and more crabbed exemption advances any legitimate goal, in any direct way or otherwise, because the agency has no facts on which to base a showing that the proper causal connection exists between the restriction and alleviation of the purported harm.

Finally, there can be no question that the new business exemption fails to satisfy the fourth prong of *Central Hudson*. That standard requires that the FCC “narrowly tailor” the revised exemption so that it is “not more extensive than is necessary to serve” an identified and legitimate goal.<sup>27</sup> The Supreme Court has explained that this means that the Commission must “carefully calculat[e] the costs and benefits associated with the burden on speech imposed” by the regulation at issue.<sup>28</sup> While the fit between the end and means need not be “perfect,”<sup>29</sup> a demonstrable degree of precision is required. Courts will evaluate that precision by considering the availability of other regulatory alternatives:

---

<sup>26</sup> *Lorillard Tobacco Co. v. Reilly*, 533 U.S. 525, 566 (2001) (internal quotations and citations omitted). The Court, however, does not “require that empirical data come . . . accompanied by a surfeit of background information . . . . [W]e have permitted litigants to justify speech restrictions by reference to studies and anecdotes pertaining to different locales altogether, or even, in a case applying strict scrutiny, to justify restrictions based solely on history, consensus, and simple common sense.” *Id.* at 555 (quoting *Florida Bar v. Went For It, Inc.*, 515 U.S. 618, 628 (1995)) (internal quotations and citations omitted) (alterations in original).

<sup>27</sup> *See Cincinnati v. Discovery Network, Inc.*, 507 U.S. 410, 434 (1993); *Edenfield v. Fane*, 507 U.S. 761, 767 (1993); *Central Hudson Gas & Electric Corporation v. Public Service Commission of New York*, 447 U.S. 557, 566 (1980).

<sup>28</sup> *Cincinnati v. Discovery Network, Inc.*, 507 U.S. 410, 417 (1993).

<sup>29</sup> *Bd. of Trs. of the State Univ. of N.Y. v. Fox*, 492 U.S. 469, 477 (1989).

A regulation need not be “absolutely the least severe that will achieve the desired end,” but if there are numerous and obvious less-burdensome alternatives to the restriction on commercial speech, that is certainly a relevant consideration in determining whether the “fit” between ends and means is reasonable.<sup>30</sup>

In its recent decision in *Thompson v. Western States Medical Center*,<sup>31</sup> the Court held that “the Government ha[d] failed to demonstrate that the speech restrictions are not more extensive than is necessary to serve [its asserted] interests.”<sup>32</sup> Justice O’Connor’s opinion for the majority pointedly noted that earlier Court opinions addressing the fourth prong had made clear that “if the Government could achieve its interests in a manner that does not restrict speech, or that restricts less speech, the Government must do so.”<sup>33</sup> Yet the legislative record contained “no hint that the Government even considered ... alternatives” to its outright ban on speech.<sup>34</sup> In language phrased to attract attention, the Court declared that “[i]f the First Amendment means anything, it means that regulating speech must be a last – not first – resort. Yet here it seems to have been the first strategy the Government thought to try.”<sup>35</sup>

The same flaw obviously infects the FCC’s rulemaking here. The Commission failed to consider *any* less onerous restrictions on the affected commercial speakers’ First Amendment rights – which essentially renders the decision automatically void under *Western States*, regardless of the weaknesses of the Commission’s case on the other prongs of *Central Hudson*. And, once again, it is plain that the legal infirmities flow at least in part from the lack of notice here. Without evidence to either identify a harm or tailor a constitutionally viable remedy, the

---

<sup>30</sup> *Cincinnati v. Discovery Network, Inc.*, 507 U.S. 410, 418 n.13 (1993) (citation omitted).

<sup>31</sup> *Thompson v. Western States Medical Center*, 535 U.S. 357 (2002).

<sup>32</sup> *Id.* at 1506 (internal quotations omitted).

<sup>33</sup> *Id.*

<sup>34</sup> *Id.* at 1506-07 (internal quotations omitted).

<sup>35</sup> *Id.* at 1507.

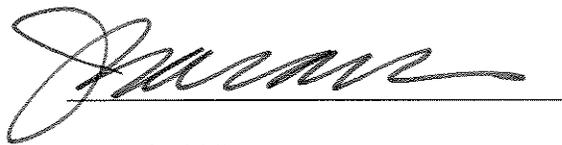
FCC has no basis for demonstrating that its chosen restriction was carefully considered. Why should the “existing business relationship” expire 18 months after the last transaction—why not 20 months? Twelve months? Or any other number of months? Similarly, why is three the magic number with respect to inquiries? There is nothing in the record because the FCC never asked the right questions.

In short, the revised business exemption cannot survive court review. The Joint Petitioners urge the Commission to vacate the new rules now rather than waste its strained resources defending court challenges that it cannot win. Those resources would be better employed in conducting a new round of rulemaking with clear notice that may elicit the facts that the FCC would need to proceed with any changes to the existing exemption.

## VI. CONCLUSION

For the foregoing reasons, the Joint Petitioners respectfully urge the Commission to reinstate both the existing business relationship exception to its rules prohibiting unsolicited commercial facsimile advertisements and the prior definition of “existing business relationship.”

Respectfully submitted,



Jan Witold Baran

August 25, 2003

Counsel:

Jan Witold Baran, Esq.  
John F. Kamp, Esq.  
WILEY REIN & FIELDING LLP  
1776 K Street, N.W.  
Washington, DC 20006  
(202) 719-7000

## ATTACHMENT A:

### DISCUSSIONS BY THE JOINT PETITIONERS OF THE IMPACT THE REVISED FACSIMILE ADVERTISING RULES WOULD HAVE ON THEIR BUSINESS OPERATIONS IF ALLOWED TO GO INTO EFFECT

#### The Chamber of Commerce of the United States (the “Chamber”)

In a typical year the Chamber hosts hundreds of events (breakfasts and luncheons with speakers, seminars, conferences, rallies, etc.) that involve an attendance charge, usually to recover overhead costs for things such as meals. Thousands of persons attend such events each year, a large portion of whom receive their invitations via facsimile. While there is certainly a transition to email taking place, facsimile is still one of the preferred methods for distributing invitations to these events. The burden of obtaining and maintaining signed, written consents from these persons would be significant.

*Excerpts from letters from Chamber members describing the impact that these rules would have on their businesses:*

- Mr. Terrence Hutton: “On behalf of Howe & Hutton, Ltd., a Chicago law firm which primarily represents trade associations and other not-for-profit tax-exempt entities, I want to express my concerns both as a firm owner and on behalf of the many association clients we represent. The revised Do Not Fax rule strikes me as a sledgehammer to swat a fly. Both this firm and our association clients have business relations with hundreds, even thousands, of other businesses with which we and they do business. These include our clients, our suppliers, those who make inquiries of us, those who make telephone or face to face requests at industry meetings for information. For our associations, the same problem occurs, but in much greater numbers. The Commission greatly underestimates the problem of getting all of these contacts to respond to a request to authorize someone to send an ‘express prior consent’ to send them a fax. They will largely ignore it, the same as they do with other mail from their many business suppliers and other third parties. Second, the definition is imprecise. An ‘unsolicited fax advertisement’ includes what? I have seen a number of written explanations by competent and experienced lawyers, including our own memoranda to clients and others, interpreting what we think the FCC means, including the version which was provided by a FCC staff representative to a national audioconference audience. The interpretations are all over the lot. Is anything dealing with money, *e.g.*, a bill or dues invoice, included? That is what we were told, and that opinion was immediately challenged. Opinions vary. If a party tells me in a phone call or meeting to fax some information, is that outside the rule because sending the information was authorized orally, or is it an unsolicited fax advertisement because it was not ‘evidenced by an express prior authorization?’ The FCC staff person said the rule would be interpreted by a ‘reasonable person’ standard, but when I look at the conflicting legal advice on what the rule means, I am not comforted that judgments will be made on such an imprecise standard. I found it confusing that in the FCC explanation for the Do Not Fax rule, ... the FCC cited comments by consumer advocates that association members ‘often publish their fax numbers for the convenience of their customers, clients and other trade association members, not for the benefit of telemarketers.’ But the FCC is taking the position that any ‘unsolicited fax

advertisement' from another party must be preceded by an 'express prior authorization,' and this presumably applies to those same customers, clients and other trade association members for whose convenience the company includes its fax number in the association directory, other business directories, Yellow Pages information, business cards, stationery, etc. In effect, the FCC rule says all fax advertisements constitute telemarketing. ... In the many comments I have seen by business people responding to the rule, they find it to be incredibly burdensome to go back to their customers and clients to obtain permission to send them the same sort of information they have been sending them for decades. Our firm is in that situation as well. The established business relationship that the FTC and FCC seem to find so sensible in the Do Not Call rule is totally removed from the Do Not Fax rule. The exemption for tax-exempt nonprofit organizations receives the same treatment – OK for telemarketing calls to residences, but eliminated between businesses. An association must now obtain ... a signed permission to send promotional information to its own members, who may number in the hundreds or thousands. I believe that the FCC did not fully understand the breadth, scope and practical effect of this decision. These regulations will add to the economic burden of running a small business by increasing paperwork requirements and encouraging frivolous lawsuits against unsuspecting small business owners. There are already many organizations advertising their litigation services and ready to pounce on small businesses that allegedly send out unsolicited faxes. Recall the 'bounty hunters' in California enforcing Proposition 65."

- Mr. Craig Block: "The Commission has decided, without the full input from the business community, to modify the current law by doing away with the 'established business relationship' provision pertaining to fax advertisements. I understand that I would not be allowed to fax promotions for my business. Furthermore, the rule implies that if I call to request membership-related information such as the benefits, events, and services of another business, chamber of commerce or association, I would still have to send my written permission before anything was sent to me. ... Personally, the implementation of these rules would be absolutely disastrous for my business. We have struggled just to survive since the terrorist attacks on 9-11 and plan on advertising new products in the next few months, much of this would be faxed information to both existing customers and selected prospective customers in our industry. We have lost so much money and business that this advertising campaign may be our last chance at survival. I cannot believe that the FCC would implement such utterly destructive regulations. I myself receive unsolicited faxes and have no problem with all but one, a 25 page listing which comes from Holland. Perhaps you should consider having these rules apply only to facsimile advertisements in excess of 5 pages. It is unreasonable to expect that businesses should ask their customers to waste their precious time filling out authorizations to all the companies they may want to do business with. It would be a great loss to both parties if a valuable and/or needed product or service was not purchased because the FCC stood in the way of the necessary communication needed to inform the prospective customer that this product or service even exists. Many small businesses cannot afford large advertising budgets, especially now. This proposal is a prime example of an idea where the disadvantages and unintended consequences far outweigh the benefits."

- Mr. Nickolas George: “Wisconsin Manufacturers & Commerce (WMC) represents over 4,000 businesses in our state. Like many other associations, our primary ‘product’ is information, delivered in a timely manner to our members. This information often consists of programs, products, services and seminars, which the member has asked to be informed of and consented to receive when they joined the association. In addition, our association, like most others, has established procedures to remove members from fax, mail and email lists when requested. I understand that the Order would prohibit us from faxing membership dues renewal notices, promotions for upcoming meetings and seminars, solicitations to sponsor an association activity or event, and many other essential association activities. In fact, faxing materials requested over the phone or via e-mail would be in violation of the rule, unless we first obtain written permission. These rules will force our members either to send us written permission to continue to receive membership-related information, or forfeit their right to hear about the benefits, events, and services we can offer their business, which is the very reason they joined WMC. Additionally, there are a number of gray areas in the rules that leave associations in a no-man’s-land in terms of compliance. For instance, the rules are not clear on solicitation for PAC contributions, or contributions to our 501C3 Foundation for educational purposes. The uncertainty regarding some of these critical association functions should, by itself, persuade the Commission to stay the rules until they receive the full input from the business and association community. It appears the FCC did not fully understand the breadth, scope and practical effect of this decision. These regulations will add to the economic burden of running our association, and similarly increase the paperwork requirements and cost of doing business for our members, many of which are small businesses. Moreover, enforcement of the rules will be nearly impossible, and will only encourage frivolous lawsuits by those looking to profit by this type of unfounded regulation.”

### **The Associated General Contractors of America (“AGC”)**

Prompt and effective communication among the many parties to the construction process remains one of the keys to the ultimate success of any effort to assemble the team necessary to construct a particular project. Dozens of different companies may be involved in the construction of a single project. The owner is simply the starting point. The owner may engage one or several design professionals and other consultants. The owner may also engage one or several prime contractors. Typically, the owner will, however, engage only one prime contractor and then give that contractor the overall responsibility for the construction of the project. The prime contractor will, in turn, engage the first-tier subcontractors. Those subcontractors will engage the second-tier subcontractors. The second-tier subcontractors will engage the third-tier subcontractors. And so the process will continue until the team includes all of the specialties that the project requires. At the same time, the prime contractor and each of the subcontractors will engage the suppliers, fabricators and others that each one needs to perform its portion of the work. As they prepare to do so, each one may also find it necessary to exchange facsimiles with the owner’s design professionals or other consultants to clarify details of the project’s plans and specifications.

Of course, many other business activities also require such a “team effort.” What makes construction unique, and the FCC’s new rules so enormously burdensome for the construction industry, is that the construction team is constantly changing. New teams are coming together

and breaking apart literally every day. Each project is different. Each and every one requires the owner to solicit bids and proposals from the unique set of general contractors qualified and at least potentially available to construct the project. Each time, general contractors have to solicit bids, proposals and quotes from subcontractors, suppliers and others. And of course, the latter have to respond. Subcontractors have to provide not only their prices but also written descriptions of the work they propose to perform. Suppliers may need to document not only their prices but also their quantities and delivery schedules.

Over the last twenty years, the facsimile machine has greatly facilitated this complex process. Owners may use facsimiles to solicit bids or proposals from general contractors, and the latter may use facsimiles to respond. The AGC of Kentucky reports, for example, that most of its members submit their bids by facsimile.

General contractors normally use facsimiles to solicit bids, proposals and quotes from subcontractors, suppliers and others, and for the latter to respond. Indeed, facsimiles have become the standard way for general contractors to do so. Mail is too slow. Personal delivery is impractical. And many if not most contractors and subcontractors are not yet connected to the Internet. The vast majority of construction firms are small businesses and at least many can neither receive nor send email.

The highway sector of the construction industry provides one good example of the process. Most states set a single date and time for the submission of bids on an entire group of highway and bridge construction projects. The general contractors interested in competing for one or more of these projects will typically spend the entire night before the deadline assembling their bids. They will work all night, soliciting and studying quotes that subcontractors and suppliers are normally willing to provide only at the last minute. Many quotes are for a different scope of work. Comparing different quotes, and fitting them together, will normally require follow-up facsimiles. During such a night, a small subcontractor may receive and send as many as 600 facsimiles. A general contractor could be expected to send and receive even more.

If everyone in this ever-changing cast of construction and related firms has to exchange and track consent forms, the entire process will break down. The AGC of Missouri reports that many highway and bridge contractors will bid for five to ten different projects at each “letting,” and the state has twelve lettings each year. The Colorado Contractors Association reports that over 10,000 contractors, subcontractors and suppliers participate in its construction market. One Wisconsin contractor reports that it has over 4,000 companies in the database of subcontractors and suppliers from whom it may request a quote on any given day.

The new rules on “facsimile advertisements” will also have a negative impact on the many efforts to increase minority and women business participation in the construction industry. Minority and women business enterprises (M/WBEs) are among the smallest firms in the industry. They are the least likely to have email – or the time to exchange and track consent forms. The new rules will make it much more difficult for general contractors reach out to such firms. General contractors will find themselves at great risk of not meeting federal, state or local requirements to make good faith efforts to subcontract more work to such firms,<sup>36</sup> and at the

---

<sup>36</sup> The U.S. Department of Transportation requires every state to set goals for disadvantaged business participation in federal-aid highway construction. *See* 49 CFR Part 26. Many, if not most, of the nation’s major cities also set goals for minority, women and/or disadvantaged business participation.

same time, M/WBEs will find it much more difficult to respond to business solicitations. Without consent forms from general contractors, M/WBEs cannot lawfully use facsimiles to provide quotes to those contractors.

AGC and its chapters also use facsimiles to conduct the association's business. These facsimiles apprise members not only of economic, legislative and regulatory developments, but also of AGC publications, seminars and other events that may be able to help them improve their performance.

Even though these firms have already "opted-in" to the association, the new rules will require AGC and its chapters to seek, receive and retain their written and signed consent to send them any facsimiles that meet the FCC's broad definition of an "advertisement" including – but far from limited to – anything announcing any association activity for which there is a registration fee. Given the great turnover in fax numbers, the burden of maintaining these records will be great and ongoing. And ironically, the cost will fall on the very firms that have already made it clear that they want to receive more information about their industry.

### **Community Associations Institute ("CAI")**

CAI represents nearly 16,000 members including homeowners, community associations (homeowners associations, condominiums, cooperatives, planned communities) and a multitude of professionals and vendors that serve community associations. The professionals include community association managers, management company executives, attorneys, accountants, insurance professionals and reserve professionals. Vendors serving community associations range from community association management companies to pest control providers to builders and developers.

Community associations are not-for-profit in nature and rely upon a variety of products and services to maintain the common elements of the community and to provide a livable environment. Community associations are governed by volunteer boards of directors and may or may not be managed by a professional manager or management company. Community associations largely rely upon the assessments that homeowners pay to provide for the operation, maintenance, and upkeep of the common elements. As a result, community associations operate on extremely tight budgets.

Professionals and vendors serving community associations have cultivated established business relationships with community association managers and volunteers. The utilization of "commercial" faxes by professionals and vendors is essential to the smooth and effective operation of community associations. Since a number of community associations are not managed professionally, the ability to provide product and service information to volunteer leaders via facsimile has made it possible for volunteers to obtain information on available products and services in a timely manner.

Since community association volunteer leaders turn over frequently, it would be virtually impossible for professionals and vendors to obtain written permission from volunteers to receive faxes. This would make it difficult for associations to continue obtaining the products and services that the community has routinely benefited from. It would also hamper the negotiation of contracts for products and services.

The FCC rule adds complexity and paperwork that community association volunteers should not be required to contend with. Requiring a volunteer to provide written permission to receive commercial faxes from every vendor or professional serving the community is unreasonable. Implementation of the rule would hamper the effective operation of community associations and would make it extremely difficult for professionals and vendors to do business with the communities.

Finally, implementation of the rule would require professionals and vendors to send multiple mailings to community associations and volunteers to obtain permission to fax. The cost of these mailings will ultimately be passed down to community associations that are operating on very tight budgets.

### **Credit Union National Association (“CUNA”)**

CUNA would like to point out that one peculiar – and likely unintended – result of the revised facsimile advertisement rules is that while it can directly market to its members via phone, email, and direct mail without their permission, it will no longer be able to do so if these rules are allowed to go into effect.

*The following are a number of statistics provided by CUNA regarding its facsimile marketing activities:*

- Estimated revenue from facsimile marketing of fax reply (fax on demand) in 2002: more than \$1 million – which is more than 5 percent of CUNA’s fee-based revenue stream;
- Estimated number of pages transmitted via facsimile in 2002: more than 1.3 million; and
- Estimated number of unique fax numbers to which CUNA currently sends facsimiles: 8,800.

Although CUNA is not able to provide on such short notice an estimate of the costs – in terms of both money and time – it would incur in implementing the revised rules, it does expect that, because it provides facsimile-related services to a number of other credit union associations (including 20 leagues and league-related organizations, 5 corporate credit unions, and 2 natural person credit unions) ensuring that its activities are in compliance with those rules likely will take a significant investment of staff time that could be better spent on serving the needs of its members.

### **The National Grocers Association (“N.G.A.”)**

The N.G.A. represents the independent retail and wholesale grocers in the United States that are working together daily to efficiently and effectively engage in the interstate and intrastate distribution of tens of thousands of food and grocery products to better serve America’s consumers. These business enterprises cover hundreds of distribution centers and over 25,000 retail food stores. Effective communication between retailers, wholesalers, and manufacturers/suppliers is essential to facilitate the daily and weekly commerce that involves information regarding product availability, purchase orders, deals and allowances, and other marketing-related activities. The two-way communication between wholesale suppliers and their

retail customers (as well as other trading partners in the industry) frequently consists of the essential and timely faxing of business information between the parties.

The FCC rule does not recognize this ongoing and important business-to-business need for food wholesalers, retailers and manufacturers to communicate in order to conduct efficient and effective business operations. The new FCC rule in essence would require all retailers, wholesalers and other trading partners to have prior authorization from each other. The FCC rule creates additional paperwork and adds complexity to these commercial efforts by requiring signature authorizations for each specific fax phone number. N.G.A.'s wholesalers and retailers have numerous locations and fax numbers within their business establishments that communicate with thousands of different parties. Moreover, the FCC rule ignores the numerous communications that could be sent from a variety of departments within one organization (each with its own facsimile number(s), every one of which would require prior authorization) to another. For example, a wholesaler may have advertising, sales, ordering, and transportation departments that communicate with numerous parties at the retail (customer's) headquarters and various store locations. In fact, it is common for a single food wholesaler to have to communicate with thousands of retail customers not only at each of their locations, but also with numerous departments at each retail customer's headquarters, regional offices, and individual stores. For large retail chains that have an integrated distribution system, with "one" company owning the warehouses, headquarters and retail outlets, the burden is heavy but not as heavy as those who are independent operators. For example, in the case of retailer-owned wholesale distribution companies, the FCC would require prior authorization even when the retailers being served are shareholder-owners of the company. A similar burden arises when the relationship between retailer and wholesaler is simply buyer and seller. Quite simply, for independent retailers, the FCC will create a competitive disadvantage and addition regulatory costs and burdens in comparison to large integrated retail chains. We don't believe that is fair nor is it just.

Furthermore, it is not required by the TCPA, and should not be by the FCC's rules.

### **National Association of Wholesaler-Distributors ("NAW")**

*The following is just a small sampling of comments that the NAW has received from corporate executives of its member wholesaler-distributors:*

- "I have read the analysis of this regulation. It seems unrealistic to me. We communicate with our customers daily in person, by phone, by mail, by email and by fax. Many times we are making special offers to customers at a lower than published price. We will typically call large customers about a temporary discount but fax smaller companies. This only hurts the little guy."
- "How was this able to pass muster with anyone required to communicate important technical information between parties. It has become standard practice in industry to use multiple faxes to convey the importance and accuracy of information between supplier and customer. What a decrease in productivity this will cause!!! Are there not more important issues that need attention?"
- "Ours is a company that uses a variety of media formats to communicate with our customers, one of which is the fax. While our sales and customer service departments

bear the brunt of the communications responsibility, we have found that ‘touching’ our customers, using various methods, keeps them more thoroughly informed than they otherwise would be. The fax is an inexpensive yet efficient way to do this. The new legislation will complicate this practice, if not eliminate it. Requesting the signatures of recipients may very possibly create a perception, on the part of that recipient, that they are authorizing junk faxes, which is obviously what this legislation is intended to prevent. Asking someone to sign something indicates that a contractual relationship will be established. This seems to be just a little over board for faxes. Don’t get me wrong. I myself have asked advertisers sending me faxes to stop sending, because they would send me something once a week or every couple days. The problem is – not everybody abuses faxing. Not every sender sends a fax to a fax list once or twice a week, or even more. We may fax something to our customers perhaps once a month or even every 6 weeks, just to supplement our communications program. That’s the key word – supplement. This legislature is obviously aimed at senders that abuse this medium. What about those of us that do not? I can understand the need to address the junk fax issue, however, this broad brush approach will hinder the efforts of companies that use faxing as a tool yet do not abuse it.”

- “This new regulation will cause more problems for our customers than us. Now we’ll have to get their permission to send them quotes they expect on a regular basis. It will also waste the time of their & our employees to keep records of letters, generate more paperwork for all. This will only hinder us in our relations with regular customers. I get unsolicited faxes now, but there’s a number to call to delete my name from their list. I don’t believe this fax problem is abused and will only burden small businesses which are struggling in this economy already.”
- “Our company will be adversely impacted by this new regulation. We have over 22,000 customers that we communicate with on a regular basis via fax. Our customers expect to see weekly specials opportunities to purchase discounted or special merchandise that helps them run their business on a more competitive basis. While we could move from fax to e-mail with some customers, typically the single veterinarian practice (our largest customer segment) does not have ‘state of the art’ computer and internet connectivity and this would be a competitive disadvantage for the smaller customer. Also many of our customers communicate needs and problems with our 185 sales people via fax. Our reps are on the road five days a week, and are often hard to get via telephone. Once they get home at night they can respond to customer issues via fax. This new regulation will impose a hardship our company as well as our customers.”
- “This will significantly impact our business. I just went over to the fax machine and right now we have two offerings from vendors. (And this is the Corporate office.) I’d hate to miss those opportunities. We routinely and often on a schedule receive faxes from vendors. This has long been an efficient way for us to receive and respond to important business opportunities. The same is true downstream. Many of our customers specifically ask for faxes, even if they have e-mail as an option. There are also many buyers who don’t have e-mail; many are on a ‘green screen’ terminal. I have polled some people within our company and we do not feel that the fax is being abused. We do not support this move at all.”