



INDEPENDENT SECTOR

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*The national leadership forum
fostering private initiative
for the public good*

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Leslie Smith

Federal Communications Commission, Room 1-A804

445 12th Street, SW

Washington, DC 20554

RE: Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991 (CG Docket No. 02-278, FCC 03-153)

Dear Mr. Smith:

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INDEPENDENT SECTOR is seeking reconsideration of the Federal Communications Commission's rule implementing the Telephone Consumer Protection Act of 1991 as it pertains to unsolicited faxed advertisements by nonprofit tax-exempt organizations (68 Federal Register 44144, July 25, 2003). In light of the enormous impact this rule will have on nonprofit organizations, we are pleased that the Commission has extended the effective date for this portion of the rule, and ask that it consider exempting faxed communications by nonprofits in pursuit of their tax-exempt purpose.

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INDEPENDENT SECTOR is a national coalition of over 700 nonprofit organizations, including many of the nation's leading foundations, prominent and far-reaching nonprofits of all sizes, and Fortune 500 corporations with strong commitments to community involvement, which represent millions of volunteers, donors, and people served. Its mission is to promote, strengthen, and advance the nonprofit and philanthropic community to foster private initiative for the public good.

Fax communications have been a valuable way for nonprofit organizations to share information with a wide variety of individuals who have expressed interest in their work. Contacting each of those individuals to obtain permission to include information in faxes about any services where the nonprofit must charge a fee or request contributions would require significant time and expense that would be better spent in delivering needed services. Furthermore, it will be very costly for nonprofit organizations to implement the necessary computer database changes necessary to track detailed information about the communications preferences of all of the people who want to receive information about their programs and services.

Under the previous interpretation of the rule regarding communications with individuals with whom the nonprofit had an "existing business relationship," it would not be necessary to obtain this type of permission from the vast majority of individuals who might receive faxed communications. The Commission's new definition of "existing business relationship" introduces several constraints for nonprofit organizations that communicate with many individuals who are

The Honorable John W. Gardner
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interested in their mission or programs, but who often do not make a purchase or transaction within the defined 18 month period or request information as frequently as every three months. The relationship between nonprofits and their members, donors and volunteers does not fit the typical commercial model of an established business relationship. For nonprofits, a prior existing relationship should continue until the receiver of the fax or phone call asks that they not be contacted again.

Historically, activities by nonprofit organizations in pursuit of their tax-exempt purposes have not been considered “commercial.” The new regulations raise a number of questions regarding the Commission’s definition of “unsolicited advertisements,” including whether solicitations for charitable contributions would be included. We note that the Commission exempted charitable solicitations (by both nonprofit and for-profits organizations) from the Do Not Call registry requirements because they are not primarily commercial in nature. (68 Federal Register 44160-61, July 25, 2003). This same reasoning should apply with respect to charitable solicitations by fax.

The Commission’s new fax regulations also raise questions about faxed communications that may include “advertising” sent in response to requests for information if the requesting individual did not provide written, signed permission for such advertising. Nonprofit organizations are also confused about whether fax communications to media outlets would be banned if the communication announces services, events, products, and other activities for which a fee is charged or a contribution is requested.

INDEPENDENT SECTOR and its member organizations respect the intent of the Commission in protecting consumers from receiving unwanted fax communications that tie up their telephone lines and fax machines and raise expenses for paper and printer ink. Nonetheless, we believe that reasonable accommodation for the communications of tax-exempt organizations with their current and former members, donors, volunteers, and other interested persons can and should be provided without jeopardizing consumer interests.

Again, we thank the Commission for extending the effective date of this challenging new rule, and hope that in the interim the Commission will provide further clarification as to the definition of “existing business relationship” as it applies to nonprofit organizations and the types of materials that would not be considered an “unsolicited advertisement.” INDEPENDENT SECTOR further requests that the Commission exempt from this rule faxed communications by nonprofits in pursuit of their tax-exempt purpose. Thank you for your attention to this issue of extreme importance to all nonprofit organizations.

Sincerely,

Patricia Read
Vice President, Public Affairs
INDEPENDENT SECTOR

