



November 3, 2003

Honorable Michael K. Powell, Chairman
Federal Communications Commission
445 12th Street, S.W. Room 8-B201
Washington, DC 20554

Re: Rules and Regulations Implementing the Telephone Consumer
Protection Act (TCPA) of 1991

Dear Mr. Chairman:

I am writing in response to the Opposition filed by Walter Oney to the Petition for Reconsideration filed with the Commission by the Office of Advocacy of the Small Business Administration (Advocacy), with respect to the unsolicited fax regulations contained in the Commission's Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991.

We strongly object to Mr. Oney's request that the Commission dismiss Advocacy's Petition for Reconsideration. In August, NFIB joined other industry groups in filing our own Petition for Reconsideration. Like the Office of Advocacy, we believe that the Commission failed to consider adequately the impact of the new proposal on small business and should reinstate the Established Business Relationship exemption.

Mr. Oney bases his Opposition on several flawed arguments. He first contends that Advocacy's Petition does not "reflect the needs and desires of Advocacy's statutory constituency." This statement ignores that Advocacy's petition is based in part on its statutory obligation to ensure that federal agencies comply with the Regulatory Flexibility Act (RFA). Moreover, President Bush reinforced this role signing an Executive Order in August 2002 reminding agencies to protect small businesses when writing new regulations. Small Business groups like NFIB depend upon the Office of Advocacy to perform this role not for our trade association, per se, but for the 600,000 small businesses that we represent.

The other points made by Mr. Oney claim that Advocacy "overstates the burden of compliance with the written-permission rule" and "exaggerates and misstates material facts." We disagree with Mr. Oney's claims and reassert the valid points made by Advocacy that the 20 million or so small businesses in this country could use faxes to communicate with their customers and that the process involved with sending, receiving, and filing the written permission forms would be burdensome. Mr. Oney seems to base this argument on his personal opinion and anecdotal knowledge, with no statistical

evidence backing him up, that small business owners do not use faxes to advertise and that they will not be burdened by gathering permission forms.

Regulations should not be based upon personal opinion and anecdotal evidence -- they should be developed with careful analysis of hard data. That data can be developed through sound initial and final regulatory flexibility analyses. Analyses which the FCC did not perform in the manner prescribed by law, as the Office of Advocacy ably discussed in its petition. The FCC also did not consider alternatives that would minimize the impact of the rule on affected small businesses as required by the RFA. The Office of Advocacy should be commended, not criticized, for doing its job -- ensuring that government agencies do not trample the rights of small business owners by performing lip service to the RFA rather than doing the detailed analyses that statute requires.

We also take issue with Mr. Oney's conclusion because we believe that the ability of our members to fax information to their established customers is essential to their business and does not constitute "junk" faxing. But we also disagree that the Office of Advocacy has misconstrued the impact of this rule. As stated earlier, the Office of Advocacy's role in this process is to make sure that the FCC takes into account the burden of its rule on the potential 20 million businesses that can be affected. Advocacy rightly points out that in its Initial Regulatory Flexibility Analysis and Final Regulatory Analysis the Commission not only underestimated the burden of compliance that would be imposed by its rule, it also failed to outline alternatives for small businesses.

We urge the Commission to carefully consider Advocacy's petition for reconsideration and reexamine the impact that this rule will have on small business. In doing so, we hope the Commission will reinstate both the existing business relationship exception to its rule prohibiting unsolicited commercial facsimile advertisements and the prior definition of "existing business relationship."

Sincerely,

A handwritten signature in black ink, appearing to read "Dan Danner", with a long horizontal flourish extending to the right.

Dan Danner
Senior Vice President
Public Policy