

October 27, 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 Mr. 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.

Mr. Oney alleges that Advocacy did not properly discharge its statutory duty to identify and obtain advice from individuals affected by proposed regulations, but instead acted on behalf of trade associations and membership organizations. He argues that "[a] petition based solely on the impact on trade associations, membership organizations, and non-profits is therefore woefully unrepresentative of Advocacy's real constituency."

I defer to Advocacy to respond to the accusation that they acted "solely" on behalf of membership organizations. But even if it were true, to call that "woefully unrepresentative" of the small business community defies reason. Trade associations and membership organizations do not speak on behalf of their Washington office staff; they speak on behalf of their members. Trade associations and membership organizations represent hundreds of thousands of *individual* small business members, and one of the primary reasons they join these organizations is that, through their membership, they are ensured that they have a voice in Washington. To dismiss that voice is completely counter-intuitive.

The National Association of Wholesaler-Distributors (NAW) represents 40,000 individual businesses, and many of them communicated with us immediately upon learning of the FCC's new rules regarding unsolicited commercial faxes. These comments came from "individuals representative of affected small entities," the very people from whom Advocacy is supposed to seek advice and recommendations.

We compiled a record of these contemporaneous comments from our members, which we widely distributed and which was available to Advocacy. These were real-time and real-life reactions from small business owners and employees across the country. I am including that compilation of comments as an enclosure to this letter so that it becomes a part of the record in these proceedings.

In further response to Mr. Oney's opposition, he appears to be acting on incorrect information, assumes facts clearly not in evidence in this matter, and draws flawed conclusions.

For example, Mr. Oney argues that unsolicited faxes harm small entities disproportionately, and use of them should therefore be severely restricted. Mr. Oney's conclusion that such faxing should be virtually banned ignores the corollary reality that the FCC's proposed "fax ban" also disproportionately impacts small business. It is small business that relies on the fax machine to communicate with customers and vendors. The comments of NAW's members give example after example of the negative impact these rules would have on their ability to conduct business. It should also be noted here that much of the objectionable "junk" faxing is already prohibited by TCPA regulation, enforcement of which would help mitigate the problem.

Mr. Oney accuses Advocacy of exaggeration, overstatement, and misstatement of material facts. Perhaps that is expected in this type of proceeding, but Mr. Oney is guilty as charged himself.

What constitutes a prohibited fax would seem to be a material fact, and one which Mr. Oney either misconstrues or misunderstands. He argues that he has never wished to send an unsolicited advertising fax, and appears to believe that the type of faxes proposed to be affected by these regulations is very narrowly limited to "advertisements," whatever those are. He then argues that "... when I send a fax, it *concerns* goods or services that are commercially available. I am utterly confident that no court would ever find it to be *advertising*, however." [Emphasis in original.] In fact, however, the Commission itself defined the prohibited material in just those terms: "The term *unsolicited advertisement* means 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." [Emphasis in original.] [Federal Register/Vol. 68, page 44179]

Advocacy is further accused of exaggerating the burden that compliance on these regulations would place on small business. Mr. Oney responds by arguing that the burden on the recipient of that unwelcome fax is far greater, and enumerates 10 steps that would have to be taken by that recipient. His enumerated steps include making sure the fax machine is plugged in and attached to a phone line, and "tolerate[ing] interruptions when the incoming fax alarm sounds." This defines exaggeration.

In his rebuttal of Advocacy's Petition, Mr. Oney makes assumptions and assertions that range from inexplicable to absurd. He contends that "very few businesses engage in advertising via fax. The ones that do, in my experience, are generally ones that operate on the fringe of ethical and legal business practice." This is an absurd statement, and warrants no further comment.

He argues that customers and business partners, while they may expect to receive fax communications, do not expect to receive advertising communications. Even if you accept his erroneous definition of what constitutes advertising, this statement is ludicrous. What type of fax communication would a customer expect to receive from a vendor if not commercial material? Personal letters?

*Honorable Michael K. Powell, Chairman
Federal Communications Commission
October 27, 2003
Page 3*

He rejects the assertion that membership organizations rely on faxes; yet in fact we do. He rejects the argument that gathering consent forms would be costly and time consuming; yet our members make just that claim from their personal business experience.

While we reject the arguments made by Mr. Oney in his response to the Advocacy Petition, we also believe that this exercise makes a point that cannot be ignored. These regulations were issued prematurely, and without an adequate public record having been made.

What would constitute a prohibited fax? What does "advertising" include? How much of a financial burden do unwelcome faxes impose, mostly on the smallest of businesses? How much of a burden would these new proposed regulations impose on those same businesses? How much of an effect would eliminating the EBR safe haven have? Who would be most impacted, small business or large, or both? Is prior written consent really necessary, or is there a step short of that that would rid fax machines of the "junk" that clutters them?

The Commission has no public record on which to base answers to these fundamental questions. In fact, only a very small percentage of the over 7,000 comments available on the Commission's website regarding the TCPA regulations deal with faxes as opposed to telemarketing.

We believe the Commission should grant the Petitions for Reconsideration, and begin the process of allowing Advocacy, Mr. Oney, and all other interested parties to make their cases to the Commission in a normal rule-making procedure. Further, we believe that this should be done quickly, so that a sufficient time will be allowed for the Commission to solicit, receive and consider comment on this issue and from that input to render a carefully considered decision.

Sincerely,

Jade C. West
Senior Vice President-Government Relations

Enclosure

cc: FCC Secretary Marlene H. Dortch
FCC Commissioner Kathleen Q. Abernathy
FCC Commissioner Michael J. Copps
FCC Commissioner Kevin J. Martin
FCC Commissioner Jonathan Adelstein
Dr. John D. Graham, Administrator, Office of Information and Regulatory Affairs,
Office of Management and Budget
Eric E. Menge, Esquire, Office of Advocacy, U.S. Small Business Administration
Walter Oney, Esquire

COMMENTS FROM NAW MEMBERS REGARDING THE FCC REGULATIONS RESTRICTING COMMERCIAL FAX COMMUNICATIONS

This is a significant issue for us and we would not support. I also strongly suspect this will get legal challenge right away. We do anywhere from 2-5 thousands faxes a month to our customer base that does not have direct internet access, i.e., maintenance foreman as an example, and we have very strong response from our customer bases. This is a real issue. Email is as big an issue.

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 is feedback regarding the fax broadcast regulations just passed. This action is very detrimental to the normal process flow in our organization regarding communication with customers and prospective customers. Fax is a very efficient manner in which to communicate with our end users and the proposed guidelines are overly demanding, costly, and impossible to adequately manage given our very large customer base. Please do what ever is possible to stop this legislation from being enacted.

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.

I presume that this regulation is an attempt to curtail the preponderance of junk faxes that we find on our fax machines every morning extolling the virtues of cheap vacations, re-manufactured toners, no cost cell phones to name a few. These communications drag ever other valid attempt to conduct business over the fax, down to these unsolicited levels.

We utilize bulk fax mailings to our specific customers to promote new product lines or product specials. Any curtailment through the proposed government regulations will dramatically increase the cost of such mailings in that all proposed recipients will have to be pre-qualified before they can be included on the mailing list. Please add us to your list of organizations who disagree with this proposed blanket approach that will affect all wholesalers.

What in the world is the FCC doing? B to B faxing should not be confused with email SPAM abuse nor with consumer telemarketing. Our customers are very good about telling us what they like and don't like and we damn well listen. This is regulation is nuts!

Someone within the administration ought to advise the FCC that there is a recession going out here in the real world. They should be working to find ways for us to do more business, not making it harder.

STOP THIS NEW ANTI-FAX RULE. IT WILL GREATLY AFFECT OUR ABILITY TO REACH OUR CUSTOMERS. NO ONE WANTS THESE FAX ADS UNTIL HE SEES THE ONE THAT INTERESTS HIM.

As do most of the employees of industrial distributors, I currently use the Fax Machine on an hourly basis for all sorts of communications with my current and potential customers. To limit our ability to market our products and services to potential customers could be harmful for our growth as a company, but to limit our ability to market to our existing customers is ridiculous.

In a perfect world, we would sell only one product at high volume and profit, eliminating the need to market anything else. Unfortunately many customers are either not aware of, or do not realize the many products we can offer them. I currently use the fax as a tool to make them aware of these products (usually at the time of quotation for another product). To implement new regulations to do so would eliminate a powerful advertising tool in our increasingly competitive modern society.

I have yet to receive a complaint from an existing customer concerning this educational practice. In most cases, a suggestion for a new product will either spark curiosity or no reaction at all. If a customer has a problem with this practice, it would be good business and common sense to stop the unwanted solicitation. But there again, we are talking about existing customers that usually have some kind of relationship with your company. An advertisement for a sale or product can sometimes drum up interest and can be valuable asset to your business.

Please do whatever it takes to block this regulation.

This act/law would be an unfair restriction on our ability to promote and work with our customers who rely on us for product updates, new releases and even updated MSD sheets. This would particularly hamper our ability to serve and help the smaller businesses who often do not have a sales rep assigned to them. They rely on data base marketing efforts to keep informed and up to date on the latest products and services.

I am confused and really concerned about how and why this action was taken so quickly without proper time to investigate the action/recommendation and its affect on business (particularly smaller business). In this age of electronic communication any restriction on a legitimate businesses ability to use all technology as a means to reduce costs and maintain profitability is unconscionable. Thank you for keeping us up to date on this issue. If I can help in the effort to delay and overturn this "mistake", please let me know how.

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.

As a marketing professional in a wholesale business it troubles me greatly to learn about this rapidly advancing regulation. The impact of such a ruling would greatly affect the communication link to our customers. This ruling will severely limit our information exposure to our customers, alternative methods are costly (direct mail) and/or unable to reach the breadth of our audience (i.e. accessibility to internet / email communication). I will be circulating this information to other industry professionals, please let me know if I can be of further assistance.

We use fax blasts from time to time to provide new product information to customers and to announce the introduction of special programs. We use a list that we have developed internally and each fax sent out has an opt out disclaimer. Whenever an individual asks to be deleted from the list both that name and fax number are deleted.

Thanks to the government (small letters for small minds) for adding more work to both the daily transaction of business and the initial set up of a customer. What a "stupid" burden to be placed on the industry. As a large distributor, I would imagine that our IS Dept. and its creative staff will find an "electronic" solution for this senseless waste of manpower. Pity the small guy that will have to really struggle to comply. Who benefits from this regulation?

This regulation appears to be very general and restricts the flow of valuable info from wholesaler to customer. Trying to get all customers written permission to receive this info is overly burdensome. As an individual, I had to proactively register my phone number so as not to be contacted by various mass marketers, why in this instance is the govt putting the burden on the wholesaler? Why aren't they requiring the mass marketers to get written permission from the end user before calling? Makes no sense.

We already ask our customers if they want our FAX information, so now you are telling me this wonderful FCC is going to make us complete additional paperwork for a benefit we provide our customers. Our Fax information is primarily information/pricing on the Lumber and Panel Products Market which the customers in many cases need on an every other day basis. Now to justify what we have been doing for years we will have to obtain permission in a written form to do what we are already doing. This is obviously another brainy idea from a group of federal employees who have nothing better to do than think of ways to use up more of our resources. When is the FTC going to clean up the internet smut that so blatantly exists with just the typing of an innocent word? And how about the radio airways that allow language of all types with total disregard to children. This is a ridiculous issue consideration, and should be dropped from consideration before any more time is wasted on it.

This ruling is outrageous!!! We do quite a bit of business via fax, including new product information, technical information, and special offers. We always honor requests for deletion from our customer lists, but we rarely receive them, since these are our current customers. This is another example of government regulation which we do not need.

Regulating our ability to send faxes to our business partners would not only be devastating to our business but would be bad for our dealers as well. In addition timely communication of information on changes in regulations, product recalls etc., would be greatly slowed.

This will be cumbersome and impossible to manage. It will put an unfair burden not only on Distributors but customers as well. Their efforts would be better served by addressing the near harassment levels of solicitation at private residences rather than attacking a value added service that our distributors provide in the form of Weekly Market information especially, where we have an established business relationship.

I have been in the machine tool business in Indiana for over 15 years. I have been quite successful in helping companies like XXXXX, XXXXXX, and XXXXXXXX remain competitive in the global market with innovative solutions that are efficient for their needs. One of the key ways that we conduct business and communicate with our customers is thru the FAX machine. When there is a new development with equipment we simply send a note to the customers or potential customers that have the most to gain from the information. Now, as I understand it, this channel of our business is to be shut-off, with penalties for

using FAX communications to our customers. With all the foreign competition (China, Mexico, India, etc.) can't we ever catch a break ? It would seem to me that the FCC and other officials would work a little harder on stopping the hollowing-out of industry in the USA, and try to find ways to help businesses here to do more efficient business.

We have 600 independent distributor locations and we are heavily dependent on power faxes for our normal business. I have instructed our staff to take immediate action to obtain these signatures as a defensive measure. The FCC may have good intentions but I don't think they know how vital this communication link is to a business such as ours.

I find it almost impossible to believe that the FCC has implemented its "No Fax" regulation. We are a small firm with hundreds and hundreds of customers. We use the fax machines a lot. Is there not some Administrative Procedures Act which prohibits this kind of unilateral action? How about the federal "Paperwork Reduction Act"?

The FCC's new regulations limiting the rights of businesses to contact their customers via FAX sounds like illegal censorship!

Obviously, this law, intended to put an end to unsolicited faxes has gone too far. A great deal of our current business, even in an internet crazy world, is still done using the fax machines. Certainly from a practical standpoint, we would expect our legislators to reevaluate this provision and allow for existing customers to be exempt from this limitation. Without reconsideration, we will be required to obtain written permission from everyone we fax, an initiative that will be nearly impossible to complete. Please do whatever is necessary to repeal this law.

As President of a supply company, I am responding to the proposed new regulations governing how businesses and trade associations can use faxes to communicate with their members and customers. A Cooperative wholesaler distributor with 129 independent owner operating over 270 stores, we are one of the largest wholesaler-distributors in the HVACR industry servicing over 400,000 contractors across the United States with sales in excess of \$650,000,000.

My first reaction is, once again we see that our elected officials are attempting to create laws to restrict and harm one of America's traditional businesses without input from those that these policies will affect. How many more regulations will they impose until the cost to do business here in this country becomes untenable? Do they ever listen to the customer? If we did not listen to our customers we would not be in business today!

Currently, we mail approximately 400,000 marketing flyers to our wholesale contractors monthly. These flyers offer special pricing on selected tools and seasonal products used in their daily business. They also offer training and technical tips and information. A full-line product catalog is sent to these same contractors annually. Throughout the month we will fax our contractor customers updates on pricing changes, training opportunities and/or special product offerings that might affect their day-to-day cost of doing business. As you can imagine the cost to provide this same service by US Mail would be considerable and restrictive to the small independent business owner. The cost advantage and timeliness of providing marketing information is significant to the health and welfare of our members.

Getting written approval from 400,000+ contractors may seem simple to the people from the FCC but their apparent lack of basic knowledge about human nature is incredible. How many of these contractors will take the time or make the effort to sign a document authorizing solicitation is questionable at best and the mere cost and effort to the wholesaler to attempt to gather these signatures would be enormous.

We and our 2365 nationwide employees strongly object to this proposed regulation.

The new fax regulation is a huge problem. We send a copy of our quarterly specials flyer to all our customers and they love it. (It's very easy to ask to be dropped from the list and we do it immediately). We are going to have a lot of unhappy people and it will effect our sales!! We need the regulation changed!

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 a-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.

Our current customers are not going to want to waste time with "permission slips" for all their vendors with which they currently do business. Likewise, I have no desire to do the same for all suppliers that I represent. The exemption for ongoing business relationships should be reinstated. Another typical government reg/agency out of control. If this is to control abusers of the system, go after them, not those of us using the tools correctly in our day-to-day business. Absolutely ridiculous!!

This restriction would have a HUGE negative impact on our business. we have daily FAX specials that our customers regularly buy from. any customer who wishes to not receive we automatically take off the list. we also FAX all of our invoices which the customers would rather have than mailed copies. please do your best to get this rule eliminated.

Strictly as a good business practice I would not send faxes to customers who don't want to be on a fax list. Internal controls in a go forward mode and quick handling of customer complaints on slip ups prevent annoyances sent to a customer. Getting a signature, creating additional work for the seller is just not the answer, going after the obnoxious offenders in our industry is.

While the intent to eliminate some of the unsolicited advertising fax spam is a good idea, the law goes too far by requiring written permission. In a business to business client relationship there is no need to require that between two businesses that are already communicating via mail, voice and email. This will only create more paper work and burden on each business process.

This would be a problem for us in our normal marketing and communications efforts with customers. Our company policy is that we do not use fax to prospect for new customers. We do, however, use it extensively to communicate news of special events, new products, seminars, service changes, etc to current customers. In addition, we use it to invite customers to open house, tours, and demonstrations.

This is an important issue for us. We have good relationships with several Members of Congress and with Sens. Kohl and Feingold. Please let us know how we can help. The business community at least needs a postponement to permit public hearings and further Congressional review. Thanks.

Upon recently learning about the subject proposed regulations from XXXXX of XXXXXXX, of whom we are a member, I write on behalf of my company to let you know of our deep concern with these proposed changes. This change as we understand it would create additional costs for our customer base and my company to conduct business and this in the long-run would have an inflationary impact on prices. By forcing our customer base to sign a written statement to allow us to do fax material that they now have come to expect as a preferred way of doing business, we would be taking away a communication alternative that is preferred by hundreds of our customers.

Let me know if there is anything we can do to communicate this important issue to our elected officials or officials at the FCC.

My feelings on the "Fax" regulation is that it is a hinderance to business communications. The small amount of advertising recieved is of no burden. You have my vote to fight this inappropriate regulation

New rules proposed by the FCC as published in the July 25 issue of the Federal Register 68 FR 44144 will prohibit us and other wholesalers and manufacturers to send faxes advertising our products to our customers unless they have signed a written statement authorizing such faxes. The FCC rule will go into effect on August 25, 2003 unless something is done.

Knowing how much we need to keep the economy improving, I fear that not having sufficient time to comply with this rule will hurt not only companies like ours but the economy as a whole. We have new vacuums coming out soon made at our factory in XXXXXXX. and we have found that the fax is a great way to let our 600 dealers know about new products. If we have to wait until we can get these small mom and pop shops to sign and return the statement required under the new rule, we (and they) will definitely lose sales. Please ask the FCC to exclude bonafide customers from this rule or at least to give a 12 month period to obtain the required statements.

Also, why would class action lawsuits be allowed under the law? If we can't limit damages under existing laws, can;t we at least limit class actions under new ones?

If I read the info on the regulation correctly, wholesale distributors would not be able to send an unsolicited fax announcing our wkly rte delivery schedules without written permission. Ridiculous!

I DO NOT SUPPORT the FCC's Federal Telephone Consumer Protection Act. This will hurt my business to business sales and exchange of information.

Will the new prohibition on sending ads and/or product information by fax apply to international business faxes or faxes going out of the country?

Thank you for the heads up on the upcoming fax regulations. We are a small manufacturer supplying accessory items to wholesale distributors in the HVAC industry. We utilize fax distribution to announce special promotions, new products and new catalogs to individual branch locations of our distributors. As a small company, we do not have the sales force to directly contact each of these locations and without fax notification most would not know of opportunities available to them. We send only a single page and always include our toll free 800 number for removal, as well as an email address to ask for removal. Over several years of utilizing this method of communication, only a few locations have ever asked to be removed.

Does the FCC understand the potentially crippling effect this could have on small businesses in the distribution industry? We simply don't have the resources to compete without utilizing modern communication. Why such a sweeping law without middle ground - like limiting frequency or page length, allowing for removal (like email). People are notoriously lax about returning signed consent forms - making that a tremendously expensive proposition for a small business.

In any case, this type of regulation seems "a day late and a dollar short". Mass faxing is not nearly the pressing problem that "spam" is, as with faxing the sender must pay the cost of telephone utilization. Find a way to cut down or stop the 60 junk emails from offensive unknowns that people receive daily or at least force the remove links to function.

Please continue to keep me informed.

Fax broadcasting is a vital part of our company's communication with our customers. Without it, they would miss out on important price-specials and educational training (often free of charge) that they might not have known about if they haven't ventured into one of our branches recently. This is a benefit to them. If a customer decides that they no longer wish to receive our faxings, they are removed immediately. Please do what you can to reverse this decision, as it does more harm to our customers than it does to us. We want to be able continue to serve our customers to the best of our ability. Thank you.

If possible please forward on our comments on the upcoming fax legislation which requires receiver approval prior to any receipt as bad legislation. (Representatives Ray LaHood and John Shimkus and Senators Durbin and Fitzgerald) It makes faxing as a type of business contact with existing and prospective customers impractical. It addresses a problem that is not significant and limits the ability of businesses to grow their business. With the economy in its current state, we need to increase business to business activity, not limit it. Thanks

The XXXXXXX Company, a wholesale-distributor of heating, air conditioning, ventilation, and refrigeration products, was informed last week of the FCC's change in regulations which will dramatically limit the right of companies to communicate by FAX with their EXISTING customers. We currently communicate local training classes, business seminars, product specials, and other information to more than 3000 of our customers. Many of our customers have asked to be included on these lists, especially those that don't have internet access. At the same time, any customer can contact us by email,

phone or fax to have their name removed from our fax list. Many of our customers see value in our fax programs. As a result, we believe this new ruling will harm not only our business, but our ability to help our customers be more successful in their business. Therefore, we advise that the FCC reconsider their decision.

If the FCC does not reconsider this new regulation, we ask that the implementation date be changed to January 1, 2004. This will give our company, as well as many others, sufficient time to contact their customers and obtain the written permission that is required by the new regulations. Thank you for your consideration.

If the Telephone Consumer Protection Act is passed, it will greatly reduce our ways of communicating with our customers. We do not solicit faxes to anyone who has not given us their phone number. However, to ask all of these people to write out permission for us to fax them is going to be next to impossible. They are entirely too busy to do this. I am against this, as it dramatically reduces the contact that we have with our customers, and creates another hassle for them to deal with.

In regards to the article entitled, "Wholesaler-Distributors Need Written Approval Before Sending Faxed Advertisements To Customers And Others" who classifies your company as a "Wholesaler-Distributor." I currently work for a buying marketing group for Industrial products and Bearings and was wondering if this would apply to my company?

Does the new federal TCPA mean that we need writtten permission to FAX a quote requested by phone? Every day customers will call in or FAX quote requests which we routinely FAX back to the customer. In my mind this is not an advertisement but I wanted confirmation.

I oppose this regulation.

This is crazy. We need to delay this if not kill it. Please let me know what can be done.

I strongly disagree about the government's newest restriction on faxing. Getting written permission from our own customers is not necessary. This simply adds cost with no value.

We are a member of XXXXX, and this is a response to an ACTION ALERT from them. The new FCC regulations concerning faxing limits sounds a lot like down right restraint of free trade. None of us like being solicited via telephone and the result has been "do not call" registrations at both state and federal levels...I do not like to waste time and supplies on garbage faxing and we do very little; but golly, I do not believe I can control everything that is faxed out to my customers like this regulation proposes. I have close to 100 employees and at least 14 fax machines! It sounds like each time someone accidentally goes outside the regulation, it could cost me \$500. Seems to be a typical case of overkill. Everytime they impose some well meaning "regulation" on us, it builds this entire new set of procedures, training and compliance checking that must be supported by the business community. Instead of making it easier to do business, we insist upon doing the opposite. I wish that the regulators HAD to have a business on the side so that they could experience the frustration of trying to: stay honest, do a good job for your

customers, make a profit, deal with everything that is thrown your way by government agencies and not absolutely loose your mind in the process...UNBELIEVABLE!!!!

What can be done to lobby against this?

This legislation would negatively affect one of the proactive sales methods used by my Inside Sales people. Not only do they use it to feature a product of the month, our company uses it to help us maintain our ISO 9K2K registration with Customer Surveys. This Survey is one of the key indicators we look at in measuring Customer Satisfaction. Please consider these situations when determining your vote on B2B faxes. Thank you.

We have already put this on our web site, encouraging our members and suppliers to act, using the NAW model. I will also send out an e-fax to do the same thing, just to cover those that are not regularly on our site. Whose government is this anyway? Doesn't anyone ever consider a wider array of options? This is a great example of why "rules is for fools" should be the motto by which we should live our lives. Respect others is the only rule we should ever need. Thanks to our NAW friends for all they do. We will do our part as well. Regards

The purpose of this letter is to communicate my organization's concern with new fax regulations recently issued by the FCC. I am writing on behalf of _____, a wholesale supplier of giftware and home décor products. We employ over 350 employees and are located in Nebraska. The new fax regulations issued by the FCC will have a detrimental effect on our business and our customers' businesses.

We are been informed that effective August 25, 2003, it will be unlawful under the Federal Telephone Consumer Protection Act for a wholesaler-distributor (or any other business or person) to send an unsolicited "advertisement" to any fax machine -- including a customer's fax machine -- unless the customer or other recipient has granted the wholesaler-distributor prior express written permission to deliver the advertisement. This new rule is contained in regulations issued by the Federal Communications Commission and published in the July 25, 2003, issue of the Federal Register, 68 FR 44144. Prior to this rulemaking action, a wholesaler-distributor could send faxed advertisements to any person or company with which the firm had an established business relationship. These new rules eliminate this exemption. A recipient's signed written consent is now required.

We currently utilize fax advertising to communicate special promotions to thousands of retailers across the US. These retailers are existing customers, and rely on the fax advertising programs in order to take advantage of the latest price discounts. The majority of our retailers are small, single location gift stores. Many of these small business owners rely on these discounts to remain profitable and stay in business.

Fax advertising is our most cost effective advertising (about ¼ the cost of traditional direct mail) and generates a significant portion of our overall business revenue. By forcing customers to send fax consent forms, we could greatly reduce the number of existing customers we can market our products to. The consent forms will also add increased administrative costs to our business. We will be forced to incur the costs of sending, receiving, filing and referencing thousands of fax consent forms. We will also incur costs to modify our computer system in order to record which customers have consent forms on file.

We have already taken the necessary steps to insure our fax advertising is welcome by our customers. All our fax advertising clearly states that the fax was sent by us and provides the customer with an 800# to call if they would prefer not to receive fax advertising. We maintain an internal list of "do not fax" customers and insure that they are excluded from all fax advertising.

We would appreciate your help in blocking this new regulation due to the detrimental effect it will have on our business.

I am President and CEO of the _____ Companies selling personal care, cleaning and MRO products we manufacture in the US or purchased from other US manufacturers. We have over 250 sales employees and an additional 150 independent sales representatives. The current regulation which permits faxing of sales proposals to existing customers (prior transaction within the last year) is reasonable and will protect against unnecessary and unwanted faxing. However, the new regulation is unduly burdensome and unnecessary. It will cause our company increased costs and reduced sales to serve our existing customers (over 70,000). Consequently, if our costs increase and sales impaired it will impair our ability to maintain or expand our workforce in an already challenging environment. Many of our customers are small businesses and depend on our supply relationship and fax communication in the same way as other customers who have larger staffs where telephone or e-mail is the primary means of communication for sales offers and proposals. Certainly the benefits of this new regulation do not outweigh the costs and detriments to increased commerce for everyone in our countries benefit.

_____ Supply Company is the second largest distributor of products to U.S. [medical practice]. We regularly communicate with our customers via fax, and have developed a sophisticated system to automatically block all marketing advertisements to any customer that does not want to receive them. The TCPA reduces customer service, threatens health, and adds enormous costs to doing business. As a result, we object to this rule.

Many of our customers may not understand the impact of this law. As a result, they may not provide us with a signed Fax Permission Authorization. As a result, we will be unable to respond to customer requests for technical data on medications via fax, which may in turn negatively impact the health of the millions of patients they care for. As well, our business will suffer significantly.

Because of this rule, our company may have to implement an antiquated "mail-only" policy. This will delay communications, reduce service, add costs, and reduce productivity.

Our company has invested thousands of dollars in technology in order to better and more economically communicate with our customer's. A regulation which would prevent us from communicating via fax would be very costly to us and move us backward in technology. To increase productivity it is necessary for us to utilize technology that allows us to reduce costs - this includes faxing to our customer's. Thank you.

Question...does this "ban" affect only associations or businesses as well? Your email seemed to indicate that distributors as well as other businesses could not contact their customers by fax.

On 8/6/03 the following comment was sent to the FCC and receipt acknowledged:

"Speed and ease of communication is essential to stay competitive in today's economy. Job consolidations and reductions have limited time available. Faxing to EXISTING customers is a convenient, prudent and helpful way to expand benefits for both parties. It does not need government control, intervention or protection. Please withdraw the ban of fax communication without the burdensome "permission" process you propose. Thank you very much. _____,President & CEO."

Does the new FCC ruling imply that we must get permission from our customers each & every time that we FAX info to them or is a "blanket" form signed & kept on file going to suffice?

I believe the fax regulation is unnecessary and just another area our government needs to stay out of. If someone doesn't want a fax, they should not give out their fax number.

The new FCC regulations on faxing will create an unnecessary/unreasonable burden upon our company. The written statement of approval from our CUSTOMER is unnecessary and creates more work for both parties involved. Our customers want, and expect us to communicate with them via this media. How about stopping the faxes received from unknown parties, with no fax id attached, and when you try calling the number to get off of their list---no answer. Stopping that type of activity would benefit everyone with a fax machine, both business and personal. I even receive those types of faxes at home. How did they get my personal fax number?

The new FCC Faxing Regulation seems to be just another government intervention where the "cure" is once again worse than the "disease". The extreme burden that this regulation places on businesses of all sizes is unacceptable and poses a real financial threat to legitimate business transactions. This shotgun approach to legislation targets not only the few bad apples, but puts unoffending companies in a position of having to defend themselves unnecessarily. This regulation should be revoked and a different approach taken to regulate those companies that are abusing a much needed means of business communication.

We are a tiny distributor of janitorial supplies. We conduct one sale each year for ice melters. We contact only our customers and solid prospects with our sale announcement. We have found that a personally addressed fax has had the best results for notifying these people of our sale so they can take advantage of the reduced prices. Direct mail does not have the same positive results. If we cannot send these faxes without "permission" of the recipient we will be back to using the less effective direct mail approach.

This new proposal requiring us to maintain and keep a signed consent on file is absolutely unheard of. This new requirement will become very burdensome and will unnecessarily increase "our" costs of doing business, lower profits and sales and thereby impact the number of employees we are able to hire. Consequently this additional requirement should be reviewed since the costs outweigh the benefits.

Our company, _____, is one of the millions of small businesses that make up the backbone of the American economy. The upheaval of these new faxing regulations are disruptive to our marketing program and threaten our bottom line. This is a government regulation that might force higher pricing, but certainly restricts our company to a marketplace heavily laden with useless regulations that are not completely thought out. Our customers have been receiving faxes from us for over 6 years, and has been a major part of our marketing and educating customers about our product line. Any time any customer asks to be removed from our lists, we remove them immediately. This new regulation is BAD FOR ALL SMALL BUSINESS and should be revoked before it goes into effect.

Dear Senator _____:

Couldn't help but notice the recent FCC regulation requiring businesses to seek and obtain permission to send a business related fax to clients or potential clients. Luckily we know most all the businesses to whom we fax and they'll gladly grant us permission. However, obtaining that permission is going to place an additional administrative burden upon businesses that are already efficiency challenged and trying to cut costs. This is but one more example of government intervention, the result of which drives up the cost of doing business and provides questionable benefit to anyone.

Hopefully, your view of this parallels ours and you are inclined to "state our case".

If you need more info or care to discuss please feel free to reply to this email or phone at 1-800-xxx-xxxx.

This is to register my strong objection to proceeding #02-278. This proposed ban on fax transmissions would negatively impact our day-to-day operations with customers and suppliers. A large portion of our daily transactions is handled via fax transmission due to the inability to conduct business with these entities via any other medial. I also object to proceeding #02-278 as I believe it is an infringement on the First Amendment of our Constitution. [sent to FCC]

FCC Fax regulations will significantly hamper our ability to serve our customers. Many of our customers do not use email extensively or will not give their address. The postal service has continued to increase the cost of mailings.

Faxes allow us to send our customers information on new products, upcoming training classes, seasonal deals, etc. We limit the quantity we send out of respect for our customers, and they can always ask us to stop sending. If we were to keep sending, it would upset the customer, lose us business and be self defeating.

Right now, faxes are the most cost-effective and timely method for us to communicate with many of our business customers. If it goes away, it will severely hamper our ability to do business.

Again, alternative suggestions for concerns officials:

require option to "de-list"

limit to customers or others who have signed a statement.

require them to be personally addressed to prove a relationship

Any of these would be better! As explained on your site, the proposed legislation would be a disaster for us.

I am General Manager of XXXXX Industries Inc. with 350 employees nationwide. We sell _____ products that we manufacture in the US or purchased from other US manufacturers. We have over 250 sales employees and 60,000 active customers. The current regulation which permits faxing of sales proposals to existing customers is reasonable and will protect against unnecessary and unwanted faxing. However, the new regulation is unduly burdensome and unnecessary. It will cause our company increased costs and reduced sales to serve our existing customers. Consequently, if our costs increase and sales are impaired, this will impair our ability to maintain or expand our workforce in an already challenging environment. Most of our customers are small businesses and depend on our supply relationship. Fax communications are very common place with our size of customer, in the same way as larger customers who have larger staffs would use the telephone or e-mails as the primary means of communication for sales offers and proposals. Certainly the benefits of this new regulation do not outweigh the costs and detriments to increased commerce for everyone. My hope is that these new regulations and their impact would be more thoroughly investigated for all types of companies.

This new requirement is overly burdensome and will increase the cost of doing business, lower sales and profits and thereby impact the number of employees we are able to hire. Consequently, this additional requirement should be carefully reviewed since the costs outweigh the benefits.

August 11, 2003

To the U S FCC

Re: New Faxing Regulation

_____ Company wants to go on record as being opposed to this recent regulation governing business use of faxes and e-mail to communicate with customers.

Perhaps a quick review of the action indicates that one problem, namely limiting telemarketing nuisance calls, was being considered and "might-as-well problem solving" seemed to creep in. The legislation was passed to limit telemarketers and then the idea came along to limit e-mail spam and while you were at it, govern business use of fax machines. The option of getting a customer's written permission in advance of sending a fax does not seem to follow the same rationale as allowing telephone-owners the option of stating their wishes not to be called. This regulation says business must obtain permission to contact customers electronically.

The cost of doing business continues to increase. It is felt with great impact, especially in these uncertain economic times. There is a need to advertise our products and services to as many people as possible. This new regulation certainly limits our avenues of contact. In fact the regulation says that we may not call, fax or e-mail information about our business without customer/prospect permission. Is that really going to happen in these very hectic times when everyone is already stretched? You offer us a very limited option of using the costly Postal Service to contact our customers.

I am sure that our experience of presenting our product line to both customers and prospects that has resulted in sales can be echoed by the many businesses that are contacting you regarding this regulation. Faxes and e-mail advertising does pay off in sales, customer awareness and good will. A mandatory statement on each fax or e-mail piece giving the recipient the option of withdrawing his name from future contact would serve the same purpose as the "Do Not Call" listing initiated by the telephone owner.

We ask that you reconsider the date of August 25, 2003 by postponing the onset of the regulation. That surely will allow the FCC and Congress to hear from all sides regarding the impact of this regulation.

**Re: Federal Telephone Consumer Protection Act (TCPA)
Fax Ban #02-278**

We are writing to express our outrage over the amended regulations in the proceeding cited above which will require us to obtain prior express written permission from our customers in order to provide them with faxed notifications of price changes and other notices of critical importance.

We are a major distributor of wearables, providing blank goods to a wide range of customers from multi-million dollar ad specialty corporations to small "Mom & Pop" businesses domestic and international. By reversing the exemption for established business relationships, you have created an unacceptable, and potentially devastating, communication roadblock not only to our business, but to all of our customers' businesses as well.

The wearables industry has an extremely dynamic, fluid nature. Our customers rely on e-mail and faxes to keep up with sales, rebates and special offers generated through us by the mills. We do not delude ourselves into believing we are their only sources for their blank products. Our reports indicate they are simultaneously working with our competitors on a daily basis.

Requiring them to send us written authorization for fax transmittals is a logistical nightmare. At the very least, we will have to: generate the letters; follow up with each customer; deal with their complaints about having to fill out the paperwork; assign personnel to process responses; and, update the customer master data file. From our customers' standpoint, not only will they have to take time out of their day to complete and mail these letters (and our competitors' letters as well) but also work blindly, without benefit of updates, until we receive and process the forms.

We are conducting business in the 21st Century. Are you?

We use faxes, e-mail, and any other method at our disposal to expedite the flow of free trade. We verbally communicate with our customers to ascertain their business needs and preferred methods of contact and allow them to opt out at any time. We understand that in this current economic environment, we cannot rely on outmoded practices of pen and ink if they are going to thrive. You must be cognizant of that. So, why, then, would you deliberately cause this kind of onerous situation?

Please reconsider this disruptive and useless ban and allow us to conduct business fairly and profitably.

The new ruling for fax requirements appears to be impossible to comply with. Must we now get permission from all of our customers to fax them the quote they requested verbally? Must we now get permission to send them a fax when we get their credit application? What about our one-time customers? We send multiple faxes per job for changes and notices.

Dear Senator _____:

We are writing to ask you to intervene with the FCC to reverse their modified regulation regarding fax communication with our established customer base.

As we understand effective August 25, 2003 we will no longer be allowed to communicate with our existing customers without having on file specific written permission from each of our 6000 established customers.

These are customers with which we have an ongoing business relationship and that relationship requires we keep in touch via the fastest and most cost effective way. This happens to be the fax machine.

Requiring each and every customer to give us permission in writing then having to maintain that data on an on going basis would be an intolerable financial burden.

Communication with our established customer's base would become too costly!

We join with all our customers and colleagues in the business community in asking you to prevent us from being burdened by this unfair FCC surprise move.

Sincerely,

cc: FCC

U.S. Chamber of Commerce
National Federation of Independent Business
National Association of Manufacturers
National Association of Wholesalers
The White House office of Management and Budget

The proposed ban on faxing marketing communications messages will significantly reduce our ability to communicate with our customer base and potential prospects. We rely on fax messages to be able to deliver news of special pricing, promotional offers, new products, vendor programs and services, etc. Our customers depend on these timely updates to be able to stay competitive in their various marketplaces, with the latest product information from us. Faxing serves a vital communications function with our customer base and with potential prospects. To our customers ... Time is money, and fax messages offer a tangible, succinct means of staying informed ... And staying competitive.

In response to the impending ban, we have contacted all our member retailers and asked them to sign a release for future fax transmissions. A nuisance for them and us as we are required by charter/agreement to provide them with fax information.

Why would members "belonging" to an organization be opposed to receiving faxed information from the organization? I suppose now all the organizations will have to get permission and hope that the form is faxed back in time to relay important information. It is truly unfortunate that organizations are being picked on when the real culprits are the senders of TRULY unsolicited faxes we have been receiving for years.

Our company manufactures riding lawnmowers, which we distribute to nearly 1000 dealer across the U.S. and worldwide. In addition to phone and email, we communicate via fax for invoicing purposes, as well as new product and product update information. With this fax ban approaching, not only will we need to consume time while we get authorization from our dealers and distributors, but we must also maintain this list. Please also note, that this is the busiest season for mower dealers, so getting fax authorizations back in a timely manner is anticipated to be difficult.

The passage of regulation to require advance approval of any faxed matters to any party I have need, or interest in faxing is nothing but an added cost to my business. It's impact in both dollars and (lack of) sense is profound. I request that this matter be placed for review, and reversal.

A great deal of our marketing to our customers is by FAX. In fact, we create a monthly "Fax Special" sheet that we send to 2000+ customers with specials, new product introductions, announcements, etc. This generates significant sales, and would have serious negative impact on our company if we had to follow this new regulation.

The proposed regulation is (a) burdensome, (b) impossible to comply with on short notice, and (c) unnecessary. Does the FCC want us to stop sending faxes to people who want them and then lay off employees due to the consequent business loss? Wouldn't that be a fine way to help the economy!

We strongly oppose the FCC's new Regulation - proceeding #02-278 which modifies the existing rule by now making it illegal to send faxes to accounts, customers and other with whom a business or individual has an existing business relationship, if such fax contains any promotional or advertising language. In today's world fax communication is an effective and often efficient substitute for phone calls and sending letters through the mail. It is a good way to communicate with those with whom we have a business relationship regarding special events, such as close-outs, new employees, new services or products. These people certainly are not a random group; these people are likely those who would want to know such information. Why then hinder this efficient and effective form of communication? Normal business flow involves faxes. Our standard fax sheet which is used to regularly communicate vital information about orders, quotes, etc. often contains 'announcements' which we wish to bring to our customer's attention. This is good business and helps small businesses like ours cope with the high cost of mailing; it is certainly not the same thing as mass faxing to purchased fax lists to blanket an area. Why should this be made illegal and hinder the legitimate ways people do business???

We are manufacturers and wholesale distributors. We need to be able to tell our customer base about new services, products, new representatives, liquidation, price changes, special pricing, availability of products, etc. We operate on rather small margins, efficient and effective communication with our customer base is essential. Anything that hinders it will make us less competitive. This pending rule greatly hinders legitimate communication and unreasonably hinders legitimate commerce.

The suggested solution of getting each and every customer to sign original consents to receiving promotional faxes may sound good in theory, but in reality it is a nightmare and effectively kills this form of legitimate business communication. For a small wholesale distributor with a customer data base of over 3,000 accounts, just keeping track of such consents would be absurdly burdensome and expensive. The simple truth is that the 'consent solution' is not a solution at all. No one can afford to comply. Small businesses like ours is already struggling to survive, we do not need yet another expensive bureaucratic rule to deal with.

In any event the problem of sending unwanted advertising to our own customer list is self regulating: if our advertising offends or in any way annoys any of our customers, we are likely not to get their business. How much more of an incentive does one need not to send annoying and unwanted faxes???

We strongly urge that the Rule be revised to permit faxing of advertising to those with whom the sender has a business relationship.

Our existing fax database includes about 7,000 customers. In an economy where many distributors are barely making ends meet we have found a way to communicate with our customers and reach new customers. One of the successful mediums is our broadcast faxing. If we were lucky enough to get 5% of

our customers to sign and fax back a form saying it is ok to fax them promotions, our revenue would decrease incredulously. It is the easiest way to communicate our message to our customers, and the response we get from them lets us know it is working. It would be devastating to us if this fax ban goes through.

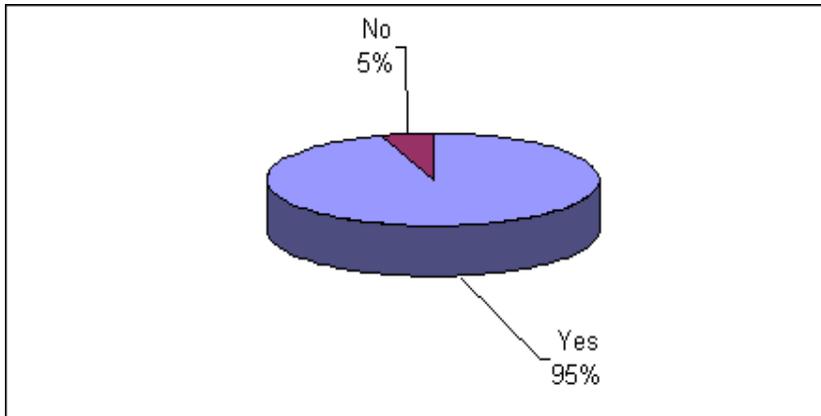
This provision is ill advised and will hamper companies from pursuing legitimate business opportunities. It will also put U.S. companies at a disadvantage vis a vis foreign competitors. The FCC has no jurisdiction over foreign entities and faxes and the internet play an increasingly important role in those entities pursuit of U.S. business activities. Why would an arm of the U.S. government want to harm U.S. business? Our company does not nor will not use blast faxes to get our message across to our customers. We do, however, use faxes and email to efficiently communicate with our customers and our customers expect this.

This ban will greatly hinder our Agency. We are a Manufacturer's Rep with a data base of over 3,000. We constantly have to update our customers on pricing issues, new product, changes in product, warranty information, etc., and it is a constant job just to keep the data base up-to-date. Having to mail this information would be extremely costly and time consuming. We absolutely need the mass-fax system. We do not use this system for advertising.

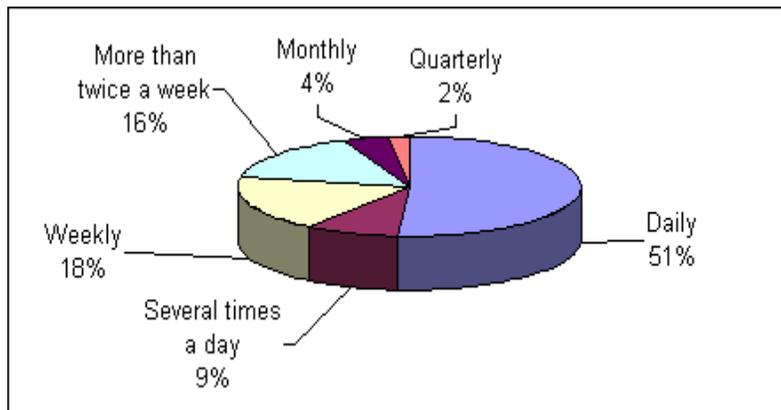
The following is the result of a survey taken of companies conducted by a NAW Member Association of its almost 500 members. Survey generated a 14% response, 75% of it within the first 48 hours.

Proposed Federal Communications Commission (FCC) Ruling on FAX Transmissions

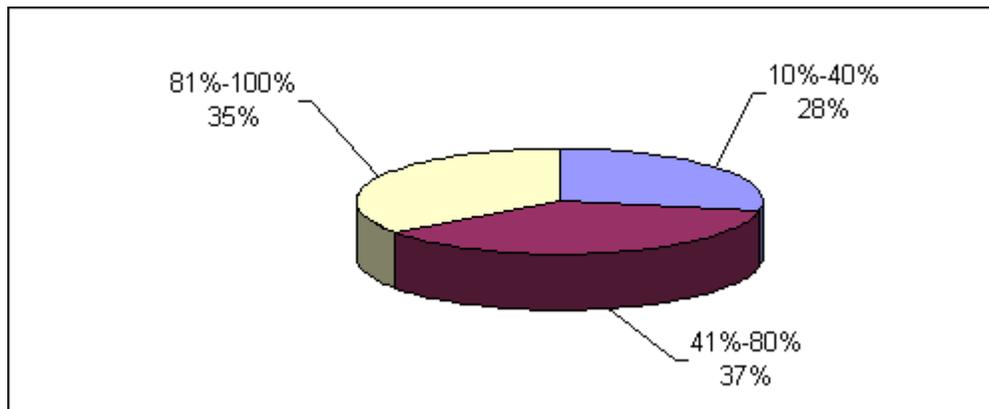
1. Do you communicate commercial information (price lists, availability, etc) with customers via fax?



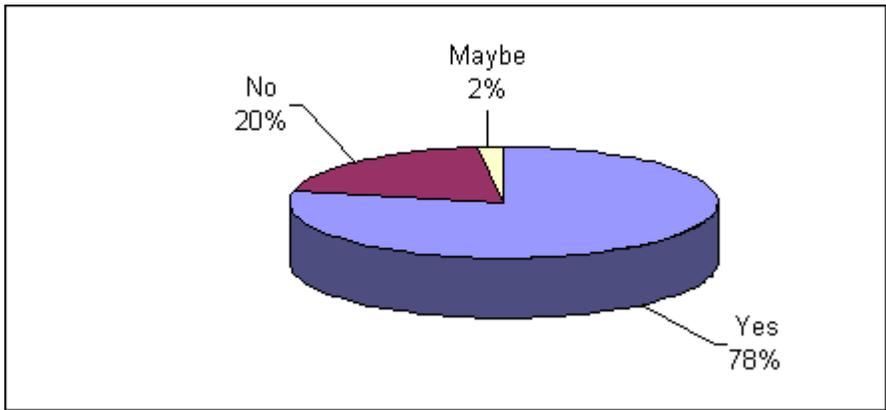
2. How frequently does this type of communication occur?



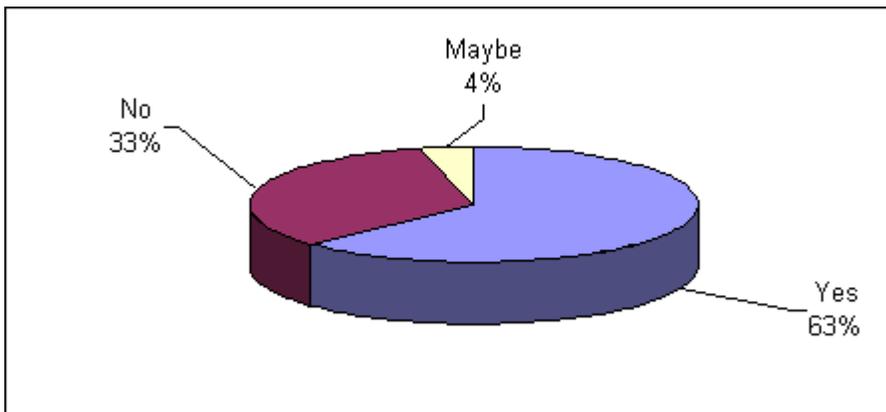
3. To what percentage of your customer base do you communicate with this way?



4. Base on what is described on the previous question, do you see this proposed rule as a significant problem for your business?



5. Do you think you will have a difficult time obtaining consent from customers? If so why?



Most Common responses:

- It will hurt potential customers
- Time consuming
- Difficult to get a hold of
- Will not get answers back