

I am a small business owner, and I wish to request that the Commission NOT extend the stay of the unsolicited facsimile advertisement rules adopted by the Report and Order, June 26, 2003.

Further, I wish to address what I consider to be false and misleading comments appearing in some recent petitions.

First, **the TCPA has NEVER had an Existing Business Relationship exemption for junk faxes** (notwithstanding a transient FCC interpretation aberration). Courts have consistently recognized that the plain language of the TCPA has an EBR only for telemarketing calls. This was also the clear Congressional intent, since the facsimile section of the TCPA had an EBR exemption that specifically was removed prior to passage of the bill. The FCC was correct in reversing its earlier, incorrect interpretation.

Second, unsolicited commercial faxes are unwelcome whether they come from a real estate agent I spoke with one day at an open house or from a mortgage company I've never heard of. In both cases, the faxes seize my fax machines and telephone lines so they cannot be used for the benefit of my business and they force me to pay for supplies (paper & toner). I certainly had no intention of giving the real estate agent permission to start junk faxing me—and make no mistake, both of these examples are “junk faxes.”

I have bought and sold properties for 35 years and exchanged many faxes in that process, but none would raise an issue under the current rules, because they were contracts, addenda, inspection reports, etc., BUT NOT UNSOLICITED ADVERTISEMENTS. The examples and examples of number of faxes in these petitions are bogus. I have never seen an example of a sender being sued for sending a requested fax; I've seen many examples of senders with no true EBR trying to avoid responsibility for junk faxing because of some manufactured or ephemeral EBR.

HR4600 and S2603 would create a nightmare for the 99% of businesses who are not junk faxers. Here are a few perhaps unintended consequences of the way these bills are written:

- Because of the way an EBR is defined, each individual and small company could easily have 10,000 EBRs
- A single trip to the supermarket could easily create 50 new EBRs

- There is no way to opt-out of receiving faxes until one has already received one—like creating direct mail with postage due, where the recipient has no choice except to pay the postage
- There is no limitation on the goods or services advertised, so your telephone company could fax you ads for Viagra without fear.
- There is no restriction on time of transmission. One of my fax lines shares a second phone line, which already rings beside my bed at 3 AM with junk faxes.
- If these bills are passed and signed, junk faxing will grow exponentially. Wal*Mart can start junk faxing their weekly ads to the 40 million fax machines in the U.S. Newspapers can just start faxing all their ads to subscribers. Your telecom company can begin faxing mortgage offers and stock touts.
- While the petitions whine about the burden of maintaining opt-in lists by the companies who want to transfer their advertising costs to consumers, the administrative and operating costs transferred to the rest of us would be orders of magnitude larger from the proposed opt-out model.
 - o There are an estimated 2 billion junk faxes sent each year in the U.S.; passage of these laws would likely increase that number by 10 to 100. If we assume 100 billion junk faxes per year, the cost to consumers and business would be about \$10B/year in direct costs.
 - o The burden of maintaining records would be transferred to the recipient of the faxes. I have 3 fax machines and approximately 10,000 EBRs. Under these bills, I would have to separately opt-out 30,000 times. If it took me only 5 minutes to opt out for each junk faxer, it would take me about 1.5 years, working full time, just to opt out of these unwanted faxes. Plus, I would then have to maintain all those records for compliance.
 - o The opportunity cost for business owners would be astronomical. The time I spend opting-out is time I cannot spend building my own business. The time my fax machines are occupied (or out of paper or toner) is time my business cannot receive orders.
 - o Thus, it would cost businesses and consumers many trillions of dollars every year in direct operational costs, in costs of terminating unwanted

relationships, in maintaining records, and in lost business. **WHY SHOULD THE UNWILLING RECIPIENTS OF JUNK FAXES HAVE TO BEAR THE BURDEN OF THESE COSTS TRANSFERRED FROM THE JUNK FAXERS?**

Make no mistake; from the point of view of the businessman or consumer, these are all unwanted and junk faxes. Because I called a mortgage broker once to inquire about a loan in no way implies that I wish that broker to be able to junk fax me for years to come. I don't want the supermarket or Procter & Gamble to be able to junk fax me for years because I bought a tube of toothpaste. I don't want Wal*Mart junk faxing me because I bought a gallon of milk there. Yet all of these would become legal under HR4600/S2603—legal but STILL VERY MUCH JUNK FAXES.

I find it particularly entertaining that a couple of petitions were written by a law firm who felt it necessary to sue a fax blaster on their own behalf because junk faxes were interfering with their business—I'm sure that same fax blaster is ecstatic at the thoughts of all the business they will get sending newly legalized junk faxes to that same law firm on behalf of office supply firms, real estate firms, florists, sellers of floor wax, telecom suppliers, and the other 100,000 firms with which that firm undoubtedly has EBRs (by the HR4600/S2603 definition). Multiply that by the perhaps 50 fax machines the firm has, and they would have 5,000,000 opt-out request to process and track. And they are only a mid-sized company.

The June 26, 2003, R&O should go into effect as soon as possible, and S2603 should be killed as the unvarnished vehicle it is to force a massive, unwanted transfer of advertising costs from a few large advertisers to the business and consumers recipients forced to pay to receive the unwanted advertising.