



DLA Piper Rudnick Gray Cary US LLP
1200 Nineteenth Street, N.W.
Washington, D.C. 20036-2412
T 202.861.3900
F 202.223.2085
W www.dlapiper.com

E. ASHTON JOHNSTON
ash.johnston@dlapiper.com
T 202.861.6665

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Via Electronic Comment Filing System

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: Petition of Staples, Inc. and Quick Link Information Services, LLC
for Expedited Declaratory Ruling and for a Cease and Desist Order,
CG Docket No. 02-278

Dear Ms. Dortch:

This letter pertains to the above-referenced May 3, 2004 Petition of Staples, Inc. and Quick Link Information Services, LLC (collectively, "Petitioners") for Expedited Declaratory Ruling and for a Cease and Desist Order (the "Petition").

The Petition sought an expedited declaratory ruling and a cease and desist order in connection with a class action lawsuit under the Telephone Consumer Protection Act, 47 U.S.C. § 227 (the "TCPA"), filed by Mattison R. Verdery, C.P.A., P.C. ("Verdery") against Petitioners in the Superior Court of Richmond County, Georgia. Petitioners were compelled to seek relief from the Commission because, during the state court proceedings, Verdery directly challenged the Commission's authority to issue orders providing that an established business relationship constitutes the necessary consent under the TCPA for companies like Staples to send facsimile advertisements to their customers.¹

¹ *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CC Docket No. 92-90, Report and Order, 7 FCC Rcd 8752 (1992); *Memorandum Opinion and Order*, 10 FCC Rcd 12391 (1995); FCC 03-153 (July 3, 2003) (collectively, the "Established Business Relationship Rules"). See Petition, Ex. 6 (example of Verdery's claim that "the FCC lacked the authority to establish an exemption to junk fax liability").

The last activity regarding the Petition was on July 30, 2004, when Petitioners supplemented their Petition and responded to Verdery's opposition to the Petition.

Thereafter, it appeared that Congress would act to codify the Commission's Established Business Relationship Rules and that such legislation might substantially alter, or perhaps moot, issues raised in the Petition. The Commission even issued an *Order* on October 1, 2004, delaying the effective date of its changes to the Established Business Relationship Rules until after June 30, 2005 because of the pending legislation.²

Subsequently, although both the House and the Senate passed legislation maintaining the Established Business Relationship Rules, no bill was sent to the President for his signature. Although it is possible that the new Congress will again move quickly to pass similar legislation, it is unknown if and when this will occur. Meanwhile, Petitioners continue to be faced with defending against an alleged class action which is based on Verdery's claim in a Georgia state court that the Commission's present Established Business Relationship Rules are invalid and do not govern Staples' facsimile relationship with its customers. Petitioners, therefore, respectfully request that the Commission now move forward to decide the pending Petition, as modified hereby.

To simplify and expedite the Commission's consideration of their Petition, Petitioners hereby amend their Petition to narrow the relief sought to the following:

(1) A declaration that the Established Business Relationship Rules are valid, final orders of the Commission and are applicable to all facsimile advertisements sent and received from the effective date of the TCPA until at least June 30, 2005; and

(2) A declaration that the Commission's issuance of the Established Business Relationship Rules is a valid and binding exercise of the authority granted to the Commission by Congress under the TCPA.

A decision by the Commission on these issues is critical, given Verdery's direct challenge to validity of the Established Business Relationship Rules. Under the federal Communications Act and the Hobbs Act,³ the Commission is the only forum with authority to resolve these questions at this juncture. Because the Commission is the only

² *Order*, CG Docket No. 02-278, FCC 04-223 (Oct. 1, 2004); 2004 WL 2203284 (2004) ("*October 2004 Extension Order*"). As the Commission noted, "we believe the public interest would best be served by delaying the effective date of the written consent requirement for six months to allow Congress to act."

³ See 47 U.S.C. § 151 et seq.; 28 U.S.C. § 2342(1). Of course, after the Commission issues a ruling, any party who disagrees with the ruling may appeal to the appropriate federal court of appeals. See 47 U.S.C. § 405.

body that may lawfully determine the validity of the Established Business Relationship Rules in the first instance, Petitioners also have filed with the state court a motion to stay proceedings with respect to the Rules' validity until the Commission can consider and rule on that issue.

A decision by the Commission on the Petition would be beneficial not only to the parties to this proceeding, but also to the many other parties interested in the Established Business Relationship Rules. In its *October 2004 Extension Order*, the Commission noted that "[t]he Commission received numerous petitions for reconsideration and/or clarification of the telemarketing and fax rules, which are currently pending before the Commission. The vast majority of petitions address the Commission's rules on unsolicited facsimile advertisements."⁴ Thus, resolution of the issues presented by Petitioners would also provide needed guidance to other parties. Petitioners, therefore, respectfully urge the Commission immediately to address the narrow questions now presented by the amended Petition: Are the Established Business Relationship Rules valid and binding and did the Commission have the authority to issue those Rules.

Respectfully submitted,



E. Ashton Johnston

*Counsel for Petitioners Staples, Inc. and
Quick Link Information Services, LLC*

EAJ/jas

cc: K. Dane Snowden, Chief, Consumer & Governmental Affairs Bureau
Jay D. Brownstein, Esq.
Harry D. Revell, Esq.
Kevin S. Little, Esq.
Mattison R. Verdery, CPA, P.C.

⁴ See *October 2004 Extension Order* at 2, n.8.