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April 28, 2005

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

Re: Oral Ex Parte Communications, CG Docket No. 02-278

Dear Ms. Dortch:

On April 27, 2005, Marcia Salkin with the National Association of Realtors®, Chris Merita with ASEA, Jim Katz with Premier Global Services and the undersigned met with Jessica Rosenworcel, Legal Advisor to Commission Copps; with Scott Bergmann, Legal Advisor to Commissioner Adelstein; and Ms. Salkin and Messrs. Merita and Waldron met with Jay Keithley, Acting Bureau Chief, Erica McMahon and Gene Fullano with the Consumer and Governmental Affairs Bureau; and with Matt Brill, Legal Advisor to Commissioner Abernathy, to discuss the recently filed request by the Fax Ban Coalition for a six-month extension of the stay (“Extension Request”) of the Commission’s rules governing unsolicited faxes that the Commission adopted in this proceeding. In addition, on April 28, Mr. Waldron contacted Monica Desai with Chairman Martin’s office and Mr. Keithley concerning this same issue.

We emphasized the need for prompt action on the Extension Request and why grant of the Request is in the public interest. Specifically, we emphasized the substantial compliance costs that would otherwise be borne in light of the fact that the compliance date currently is less than seventy-five days away. The immediacy of that date means that those compliance costs would be incurred despite the prospect for Congressional action to remedy this situation (the Senate Commerce Committee this month approved a bill to reinstate the EBR, and last year both houses of Congress passed a similar bill). Moreover, those compliance costs would have to be incurred even though the Commission has pending before it several petitions for reconsideration, which if granted in whole or in part would substantially alter the nature of compliance. Thus, it would be contrary to the public interest for resources to be spent in the face of the prospect for Congressional action and, equally important, the pending petitions for reconsideration.

During our meetings, the staff asked about the specific information in the record regarding the costs of compliance with the rules adopted by the Commission in this docket on June 26, 2003, regarding commercial faxes (“new fax rules”). The record is replete with

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evidence regarding the extent to which faxes are sent today based on the existence of an established business relationship between the sender and receiver. The record also contains evidence of what the likely actual costs would be for complying with the new fax rules. Specifically, the Office of Advocacy, U.S. Small Business Administration (“SBA Advocacy”) submitted a filing to the Commission to report on roundtable discussions it held with representatives of small businesses to understand the scope of the impact of the new rules. In its letter, SBA Advocacy noted that a “survey from NAW [National Association of Wholesaler-Distributors] revealed that its membership expected to pay an average of \$22,500 to obtain consent forms and an average of \$20,000 for annual compliance.”¹ Reed Elsevier, one of the major trade show enterprises, in a submission to the Office of Management and Budget and this docket, estimated based on the size and nature of its operations that “[i]t is conservative to state that Reed Elsevier’s various divisions cumulatively will incur costs in excess of \$100,000 to prepare, send, and collect fax consents.”² Finally, the Yellow Pages Integrated Media Association (“YPIMA”) submitted a detailed analysis of what its members would need to go through to comply with the new fax rules. The analysis takes a conservative estimate of the amount of time it would take for an employee to obtain written permission from an advertiser, the salary that employee would make, and the amount of advertisers and potential advertisers from whom written consent would have to be obtained by YPIMA members. Based on its conservative estimates, YPIMA calculates that the cost to its industry in employee time would be between \$60 million and \$80 million.³ This evidence indicates just a fraction of the compliance costs that all U.S. businesses would experience if the Extension Request is not granted.

Also, as we noted in our extension request, the Senate Commerce Committee recently approved legislation (S. 714) that would reinstate the established business relationship exception to the general prohibition on sending commercial faxes. Attached is a press release from the Senate Commerce Committee reporting on that event.

¹ *Ex parte* submission of Office of Advocacy, U.S. Small Business Administration in CG Docket No. 02-278 (Nov. 21, 2003) (citing *Reply to Opposition to Petition for Reconsideration* of National Association of Wholesaler-Distributors in CG Docket No. 02-278 (Oct. 27, 2003)).

² *Ex parte* submission of Reed Elsevier, Inc. in CG Docket No. 02-278 (Aug. 29, 2003), Attachment at 5. *See also ex parte* comments of U.S. Chamber of Commerce in CG Docket No. 02-278 (April 23, 2004) (survey of Chamber’s small business members, of which nearly 75% of had fewer than 20 employees).

³ *Ex parte* supplemental comments of Yellow Pages Integrated Media Association in CG Docket No. 02-278 (March 19, 2004).

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Please direct any questions to the undersigned.

Sincerely,

A handwritten signature in black ink, appearing to read "Gerard J. Waldron". The signature is fluid and cursive, with a long horizontal stroke at the end.

Gerard J. Waldron

Attachment

cc: Matt Brill
Jessica Rosenworcel
Scott Bergmann
Jay Keithley
Erica McMahon
Gene Fullano
Marcia Salkin
Chris Merita
Jim Katz



U.S. SENATE COMMITTEE ON
Commerce, Science, and Transportation

TED STEVENS, Chairman

DANIEL INOUE, Co-Chairman

FOR IMMEDIATE RELEASE

Contact: Melanie Alvord w/Stevens (202) 224-8456 or Andy Davis w/Inouye (202) 224-4546

Commerce Committee Approves "Junk Fax Prevention" Bill

WASHINGTON, DC - The U.S. Senate Committee on Commerce, Science, and Transportation today approved by unanimous consent the "Junk Fax Prevention Act of 2005" (S. 714) introduced by Senator Gordon Smith (R-Ore.) and co-sponsored by Senators Daniel Inouye (D-Hawaii), Ted Stevens (R-Alaska), Olympia Snowe (R-Maine), Byron Dorgan (D-N.D.), John Sununu (R-N.H.), Conrad Burns (R-Mont.), and Frank Lautenberg (D-N.J.).

The bill approved today:

- Establishes an exception to the general prohibition against the sending of unsolicited faxes without express consent for parties with an "established business relationship."
- Establishes a requirement that persons sending unsolicited faxes pursuant to an "established business relationship" also provide consumers with a cost-free mechanism to opt-out of further faxes, and that notice of this mechanism be provided on each such fax in a clear and conspicuous manner.
- Permits the FCC to limit the duration of an "established relationship" consistent with reasonable consumer expectations and appropriate justification by the FCC.
- Requires the FCC to report annually regarding enforcement actions taken against senders of unsolicited fax advertisements.
- Requires the GAO to conduct a study analyzing enforcement actions conducted by the FCC and suggest whether any additional enforcement measures may be warranted.

The Committee unanimously accepted 2 amendments by Sen. Barbara Boxer (D-Calif.). The first amendment required that consumers be permitted to "opt-out" of receiving further faxes by contacting the sender at any time during the day. Previously, the bill had limited the "opt-out" requirement to regular business hours. The second amendment stipulated that the FCC can commence a proceeding to limit the duration of an "established business relationship" 3 months after enactment as opposed to the 18-month timeframe established in the bill.

The bill now proceeds to the full Senate for its consideration.

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