

Regarding rule making concerning the EBR exemption for unsolicited faxes

I would request that the Commission clarify that actions by consumers or businesses to ascertain the identity of those responsible for the transmission of faxes in violation of the TCPA do not act to establish an EBR exemption.

For example, I've received hundreds or thousands of unsolicited faxes that fail to provide identification information regarding the sender or sending fax number as required by law (both federal and state). One particularly egregious offender (a mortgage banker/broker) has caused at least 130 such unsolicited faxes to be sent to me with no identifying information.

The only way to identify the offender is to call the interest number on the fax and feign interest.

In a recent court filing, this offender claimed that the act of calling them to find out the identity of the offender constituted a voluntary two-way communication and, therefore, created an EBR exemption.

Since the legislative intent of the TCPA was that such cases be handled in Small Claims courts where possible, other methods of discovery are limited or not available. The Commission should clarify that efforts to discover the identity of junk faxers does not create an EBR exemption for future unwanted faxes.

Jimmy A. Sutton