Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
Rules and Regulations Implementing The Telephone Consumer Protection Act of 1991	)	CG Docket No. 02-278
Comments in Support of the Petition for Declaratory Ruling of The Fax Ban Coalition	)	

To: The Commission

The Independent Insurance Agents and Brokers of America ("IIABA") hereby respectfully submits comments in support of the petition for declaratory ruling filed by the Fax Ban Coalition ("Coalition") concerning the scope of the Federal Communication Commission's ("Commission") jurisdiction over interstate communications under the Telephone Consumer Protection Act of 1991 ("TCPA") as amended by the Junk Fax Prevention Act of 2005 ("JFPA")[1]. A request for comments was published in the Federal Register on December 14, 2005.

[1] While IIABA strongly supports the JFPA, we continue to maintain our position from previous filings that urge the Commission to reconsider its determination that

This request for comments arises out of a recent California law purporting to regulate interstate faxes and place more onerous requirements on small businesses. IIABA believes that only the federal government has the authority to regulate interstate commerce, and moreover, has done so by passing the JFPA. IIABA supports the Coalition's petition and incorporates and adopts their arguments in this filing.

This filing will address the negative affect that the California fax law will have upon IIABA and its insurance agents members in their day-to-day work.

BACKGROUND

Founded in 1896, IIABA is the nation's oldest and largest national trade association of independent insurance agents and brokers, representing a network of over 300,000 agents, brokers and their employees nationally.

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exempting the insurance industry from liability under the TCPA would confuse consumers and interfere with protections provided by that Act. The insurance industry has been regulated by the states for well over a century, and the creation of any federal regulatory jurisdiction only imperils extremely important rights and privileges enjoyed by insurance consumers, and compromises the regulatory power granted to the states. Furthermore, the Congressional intent embodied in the McCarran-Ferguson Act expressly places regulation of the business of insurance in the hands of the states. Particularly in regard to the do not fax rules, a strong case can be made that, from a consumer standpoint, more harm than good will be done with the insurance industry's requirement to conform to the TCPA since it would inhibit the insurance agent's ability to provide effective and often time-critical service for his or her client.

Members belong to 51 state associations. IIABA is the national umbrella organization for the independent state affiliates. Membership in the state affiliates by local, independent agents and brokers is voluntary. IIABA is also an active member of the Coalition, which is a diverse group of businesses and organizations, representing a broad cross-section of the American economy.

The IIABA, its independent state affiliates and its member agencies use telephone facsimile technology to communicate with their members and customers. Typically, the IIABA and the state affiliates use broadcast facsimiles to alert and notify members about scheduled meetings, programs and conventions. In addition, facsimiles are commonly used to notify members of continuing professional education seminars and courses, course materials, books and other insurance business products and services. IIABA member agents commonly send renewal notices and reminders, and product updates and changes to customers by facsimile.

DISCUSSION

The California fax law will foster tremendous uncertainty for insurance agents and everyone in the small business and non-profit community. IIABA members operate Main Street small businesses all across the country and are

on the frontlines when it comes to driving our nation's economy. This would be a radical departure from current practice under the JFPA and would burden both insurance agents and policyholders by significantly interfering with day-to-day business activities, and, ultimately, productivity. Our member insurance agents will begin to practice "defensive frontline underwriting" meaning, should a book of business include an insured residing in the state of California, agents will be less apt to automatically send faxes regarding products, services, and policy renewals in fear that the California fax law will bring undue financial burden should he or she not have written authorization on file. Policyholders have come to expect an immediate response to their inquiries and receipt of automatic policy expiration notices, be it via facsimile or regular mail. Even agents who obtain verbal authorization to send a fax to a policyholder will fall under the shroud of culpability under the California law.

Similarly, IIABA and its state and local associations routinely use facsimiles to communicate with their members. This is information that members not only expect, but have paid for via national, state and local association dues and are a component of membership benefits. Many of these faxes will meet the definition of unsolicited fax advertisements and could not be sent into the state of California under the new fax law without undertaking the burdensome task of obtaining, maintaining, and updating express written

permission slips – the very reason the Congress passed the JFPA. Furthermore, in order for IIABA and its state and local associations to continue to send faxes to their members, several thousand additional signed written permission forms would be have to be generated, all due to the California fax number to which they are being sent. This would create a costly change in office procedure, all because of one state. The JFPA is a common-sense law with strong consumer protections. It correctly provides that if you have an established business relationship ("EBR") with the people and businesses to whom you are sending faxes, you are not required to shoulder the burden of written consent forms. It recognizes the existing good business practices of those who use the fax machine responsibly, and leaves the Commission free to go after those who abuse it.

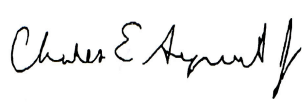
CONCLUSION

The Commission should use this opportunity to affirm that the Commission has the exclusive authority to regulate interstate commercial fax messages and preempts all other state laws that attempt to usurp that authority. Congress passed the JFPA for a reason – to allow all businesses, regardless of the state in which they are located, to have one standard in how to handle interstate faxes. To rule otherwise would cause confusion and uncertainty among businesses, and could affect opportunity and productivity.

IIABA thanks the Commission for the opportunity to comment on this Federal Register notice.

Respectfully Submitted,

Independent Insurance Agents and Brokers of America



Charles E. Symington, Jr.
Senior Vice President for Government Affairs and Federal Relations
Independent Insurance Agents and Brokers of America
412 First Street, S.E.
Washington, D.C. 20003
202-863-7000

Patrick O'Brien
Director of Federal Government Affairs
Independent Insurance Agents and Brokers of America
412 First Street, S.E.
Washington, D.C. 20003
202-863-7000