

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

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

**COMMENTS OF AMERICAN BUSINESS MEDIA
IN SUPPORT OF
PETITION FOR DECLARATORY RULING
(January 11, 2006)**

Pursuant to the Notice published in the Federal Register on December 14, 2005, American Business Media hereby submits comments strongly supporting the “Petition for Declaratory Ruling” filed in this docket by the Fax Ban Coalition on November 7, 2005.¹ The relief sought—a declaratory ruling by the Commission that it, and not the individual states, has the exclusive authority to regulate interstate commercial fax messages—is both required as a matter of law and necessary as a matter of policy.

American Business Media (ABM) was founded in 1906 and is the industry association for business-to-business information providers. Its members produce magazines, trade shows, newsletters, data, web sites and other products that enhance their primary mission: to disseminate information that is vital to American industry and professions. Its more than 280

¹ American Business Media is a member of the Fax Ban Coalition, having participated in the decision to proceed with the Petition and having provided input to the petition itself. However, it was inadvertently omitted from the list of participants in Appendix A to the Petition.

members publish 2,000 periodicals, maintain 1,800 websites and reach approximately ninety million professionals. Its members range in size from small, family-owned companies publishing one or two low-circulation periodicals to international entities with a large and diversified portfolio of business-to-business media.

Despite their differences, ABM members to a great extent share reliance on targeted fax communications with subscribers, trade show attendees and participants, advertisers and others with whom they do business. They also share the fact that their businesses focus on one or more industries and professions, not on geographic areas, such that all members, even the smallest, must communicate on a nationwide basis.²

ABM members' reliance on legitimate, targeted fax communications led them to support the Junk Fax Prevention Act of 2005,³ which amended the Telephone Consumer Protection Act (47 U.S.C. §227) by codifying this Commission's 1992 determination that commercial faxes may be sent where there is an established business relationship (EBR).⁴ And ABM members' need to communicate with customers nationwide has led them to support here the issuance of a declaratory order that will promote the Congressional mandate for nationwide rules for interstate communications. If ABM members and others must comply with a patchwork of various and

² ABM has previously been an active participant in this docket, having filed Comments on November 11, 2002, a Request for Stay on August 6, 2003 and a Request for Reconsideration and Clarification on November 25, 2003.

³ Pub. L. No. 109-21, 119 Stat. 359 (2005).

⁴ That ruling had been challenged in various state courts, some of which found that it was unenforceable as beyond the scope of the Commission's statutory authority. In 2003, the Commission proposed but then stayed a reversal of that ruling, presumably with the knowledge that Congress was considering the enactment of clarifying legislation (that became the Junk Fax Prevention Act).

conflicting state laws, depending upon the states in which the fax originates and terminates, they will effectively be prohibited from employing this efficient means of doing business. Although Congress and this Commission have properly declared war on indiscriminate “junk faxing,” neither has suggested that businesses must scrap their fax machines.⁵

ABM will of course not repeat, or even summarize, the comprehensive and compelling analysis presented in the Petition. We will add only the more practical point that frustration of the Congressional desire for a single standard governing interstate faxes has already inflicted and will continue to inflict real harm on businesses like ABM members without offsetting benefits to the public at large. Although ABM recognizes that, in some circumstances, the “cost shifting” that results from the sending of faxes is a valid concern, virtually of its members’ faxes are business-to-business, and the business recipients of these faxes understand that the very modest expense of receiving faxes is an accepted cost of doing business.⁶ On the other hand, if a legitimate business wishing to send faxes that are compliant with federal law are precluded from doing so by inconsistent and conflicting state laws and the threat of a class action lawsuit, they

⁵ ABM appreciates that its members can, in theory, fax to those from whom they have received “express” prior permission without regard to state laws that seek to overturn the Junk Fax Prevention Act, but the logistics (and expense) involved in obtaining, retaining and producing proof of that permission is prohibitive in the publishing industry, in which even a single very small circulation periodical will typically have 60,000 subscribers. Moreover, as shown in the Petition, state fax laws diverge from federal law and each other in additional ways, making compliance with all of them close to impossible.

⁶ The growing business use of fax servers that deliver faxes directly to computers obviates the paper and toner expense frequently cited in support of fax restrictions.

will be forced to spend considerable sums to communicate in other ways that are known to be less productive.⁷

In addition, if states are permitted to enforce laws such as that recently enacted by California,⁸ purporting to impose additional restrictions on faxes sent into or out of a particular state, the result will be undue discrimination against certain businesses. Assume, for example, that there are two companies publishing magazines that cover the auto parts business, one in California and one in Illinois. Under the California fax law discussed at length in the Petition, the publisher in California would be prohibited from sending “EBR” faxes to any place in the country, while its counterpart in Illinois would be free to send the same fax to anyone other than a California recipient (assuming that laws in other states so permitted). Similarly, businesses in states that impose fax restrictions beyond those in federal law will find that they have been prevented from receiving valuable (albeit commercial) information received by competitors elsewhere.

This Commission can carry out its statutory duty and enforce the will of Congress by

⁷ Unlike direct postal mail and e-mails, which are frequently overlooked as needles in the haystack, faxes are especially effective communications tools in some circumstances because, apocryphal complaints to the contrary notwithstanding, most people receive them in very small numbers. In fact, the undersigned has received only one fax at his office fax number since November 29, 2005 (and that was information from a client).

⁸ On December 20, 2005, the application of the California statute to interstate faxes was stayed until January 31, 2006, by U.S. District Court judge Morrison England, Jr.

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issuing the declaratory ruling requested by the Fax Ban Coalition. ABM strongly urges it to do
so.

Respectfully submitted,

/s/

David R. Straus
Thompson Coburn LLP
1909 K Street, NW, Suite 600
Washington, DC 20006
Phone: 202-585-6921
Facsimile: 202-508-1027
E-mail: dstraus@thompsoncoburn.com

Counsel for American Business Media

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