January 13, 2006

Federal Communications Commission
445 12th Street, SW.
Washington, DC 20554

Re: Rules and Regulations Implementing the Telephone Consumer Protection Act of
1991, CG Docket No. 05-338

Dear FCC:

We hereby submit the following information for your consideration in determining the rules and regulations implementing the Telephone Consumer Protection Act of 1991 (TCPA).

What constitutes prior express permission for receiving an unsolicited fax?

We believe that an existing business relationship (EBR), as defined in 47 CFR 64.1200, constitutes prior express permission for receiving an unsolicited fax. We do not believe, however, that any time limits should apply. In this case, 47 CFR 64.1200 proposes an "18/3" time limit, which is triggered on the basis of the subscriber's purchase or transaction with the entity within the 18 months immediately preceding the date of the telephone call, or on the basis of the subscriber's inquiry or application regarding products or services offered by the entity within the 3 months immediately preceding the date of the call. It is simple enough for a subscriber or customer to call the business or entity and "opt-out." This act will not only stop unsolicited fax advertisements, it will also effectively terminate the EBR for purposes of the TCPA by requesting to be placed on a "do-not-fax" list.

What is acceptable evidence that an EBR existed prior to July 9, 2005?

Acceptable evidence of what constitutes that an EBR existed prior to July 9, 2005 should consist of a 'reasonable-person' standard; that is, what kind of records would a reasonable person expect a business to keep? Depending on the size of the business, this may range from hand-written logbooks to electronic storage. Most of today's businesses have at least one computer that utilizes software that would enable them to maintain a database of customers. It would not be unreasonable to expect a modern business to have an on-going record of companies, people, or other entities with which they have contacted, sold something to, or have otherwise done business with. A reasonable person could expect that a solicitor will be able to access a file or record on someone they have done business with, be able to determine how

long they have done business with them, and a possibly list a point of contact or the name of a person at that company or entity. A "paper trail" should be enough to satisfy the requirement of 'acceptable evidence' that a solicitor has had an EBR prior to July 9, 2005.

What constitutes a clear and conspicuous notice for opt-out of future solicitations?

A common-sense approach to this would dictate that a legible and cost-free-to-the-consumer method of contacting the solicitor would suffice. Many solicitors have a toll-free number listed at the bottom of the first page, stating clearly that if the consumer does not wish to receive any more faxes, they can call any time of day and request to be placed on a "do-not-call" list. Having said that, a toll-free number and/or a solicitor e-mail address (perhaps in the case of small businesses where a toll-free number is not economically feasible) listed at the bottom of the first page of the fax, legible to a reasonable person, that can be accessed 24 hours a day, 7 days a week so a consumer can request to opt-out of future solicitations should serve as a baseline for this requirement.

Should the FCC attach a time frame to the EBR?

No. This would defeat the purpose of an opt-out notice. Also, such time-constraints would add considerable monitoring requirements for solicitors trying to run their businesses. An 18/3-month limitation has been proposed. This may serve to dissuade a solicitor from contacting a business or entity to offer a valuable service. For example, many establishments, including hospitals and the military, have annual training requirements for certain things, such as sexual harassment and the newly established HIPAA medical laws. An entity contacts a solicitor about the availability of training in these areas for a date 4-5 months away (they'd really like to get it now, but their fiscal year doesn't start until then). If a 3-month limitation is implemented, a solicitor may be hesitant to contact that entity out of fear of violating the TCPA and being subject to a lawsuit.

What is the maximum time frame for implementing a do-not-fax request?

A maximum time frame should be set at 30 calendar days. Any legitimate business that receives an opt-out request will enforce it immediately, or as fast as possible. To do otherwise would most likely irritate a customer and possible drive him or her to take their business elsewhere. 30 calendar days is reasonable, and in most cases is likely to be completed in far less time.

What are acceptable cost-free mechanisms for communicating opt-outs?

An acceptable, cost-free-to-the-consumer mechanism should include a toll-free telephone number, accessible anytime, where the consumer can request to opt-out of future solicitations. In the case of a small business where a toll-free number is not economically feasible, a dedicated opt-out e-mail address should be provided. E-mail accounts are readily available and free at many different locations on the Internet.

Should do-not-fax requests made to solicitors extend to the underlying client?

Only if specifically requested. An underlying client may still have a legitimate need to receive faxed advertisements and offers. There are varying reasons why a business or entity does not want to receive these advertisements, but any request to opt-out should not automatically extend to a subsidiary. To do so would place an unnecessary burden upon a solicitor to re-establish an EBR with an existing client who may not have wanted the relationship severed.

Should states be permitted to assert jurisdiction over interstate fax communications, or should that task be left to the federal government?

We believe that Congress intended the federal government to establish and maintain regulation over interstate communications, including fax communications. Certain states, perhaps well-meaning but over-zealous, have enacted laws that place more stringent requirements on the TCPA, even to the point of counteracting and contradicting the amendments made to the TCPA on July 9, 2005. This places an enormous burden upon businesses to try and interpret 50 different sets of laws when the TCPA and FCC have established rules, regulations, and conditions that are clear and concise. To continue to allow the states to create modifications to the TCPA and FCC regulations also creates fertile soil for some to generate obscene amounts of money by extorting threats against well-intentioned solicitors who are otherwise in compliance with the TCPA. There are some "consumer-based" entities, as well as attorneys, who purchase "illegal" faxes from individuals and businesses for a mere $25.00 (twenty-five dollars), then turn around and coerce solicitors to settle these amounts out of court for hundreds, sometimes thousands, of dollars, lest they be sued in court out-of-state where they don't have the resources, financial or otherwise, to adequately defend themselves when they have done nothing wrong to begin with.

We understand that some companies (e.g., Blast Fax and Fax.Com) may have created a bad name for those who would use fax machines to solicit their business. There are many law-abiding companies, businesses, and other entities that do their best to comply with the rules and regulations of the FCC and TCPA. These same companies should be allowed to offer their

products to those interested; those not interested should be allowed a cost-free and simple method to remove themselves from a fax list. 50 different sets of rules above and beyond the TCPA and FCC regulations have created an extreme burden for any legitimate solicitor to enjoy an established business relationship with a customer without fear of being accosted with a frivolous lawsuit. It is time for the federal government to draw the line and regulate interstate communications.

Thank you for your time and attention to this important matter.

Sincerely,

Coastal Training Technologies Corporation
Virginia Beach, Virginia