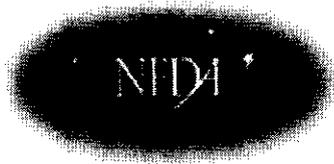


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National Funeral Directors Association

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Via Electronic Mail

Federal Communications Commission
Office of the Secretary
445 12th Street, S.W.
Washington, D.C. 20554

**Re: CG Docket No. 05-338; Proposed Rule Implementing the
Telephone Consumer Protection Act of 1991 (70 FR 75102, 12/19/05)**

Dear Sir or Madam:

The National Funeral Directors Association (NFDA) represents more than 11,000 funeral homes in all 50 states. It is the leading funeral service organization in the United States, providing a national voice for the profession.

NFDA has a great interest in the referenced proposed rule, particularly with respect to how it impacts NFDA communication with its members. NFDA is a tax-exempt nonprofit trade association. NFDA members have voluntarily chosen to join the association and pay annual dues to establish and maintain their membership. NFDA members expect communications, including faxes, from NFDA. Following are NFDA's comments on specific aspects of the proposal.

Summary

- The solicitation of comments on the duration of an established business relationship is inappropriate and premature. The Commission has not complied with the four-part test required by the Junk Fax Prevention Act (Act) necessary to engage in rulemaking on this issue;
- The Commission should create an exemption from the opt-out notice requirements of the Act for professional and trade associations, as authorized by the Act; and

- The Commission should establish safe harbors that create the presumption that permission exists to send faxes instead attempting to define what constitutes voluntary permission.

Definition of Established Business Relationship

The Commission seeks comment on whether to limit the duration of an established business relationship (EBR) as applied to unsolicited facsimile advertisements. NFDA believes that solicitation of comments, and rulemaking, on this aspect of the Junk Fax Prevention Act (Act) is inappropriate and premature.

As the Commission points out, the Act permits rulemaking on this issue only after the Commission complies with a four-part test. It has not complied with this test. The Commission presents no documentation, or even asserts, that it has: (1) received a "significant" number of complaints based on the duration of the EBR exception, (2) determined that a significant number of these complaints were based on an "unreasonable" EBR duration, (3) evaluated the costs to senders of imposing a different EBR, or (4) determined whether the costs would be unduly burdensome for small business.

The Commission should withdraw this part of the proposal and refrain from initiating rulemaking on it until it is in a position to comply with the test imposed by the Act.

Authority to Establish Nonprofit Exception

As stated earlier, NFDA is a tax-exempt nonprofit association of voluntary members who expect fax communications from it. By definition associations like NFDA are not commercial and much of the fax material sent to members is not "unsolicited advertisements."

Associations engage in a large number of transactions with their members through faxes. This includes notice and payment of dues, as well as registration for conventions, seminars and continuing education courses. These products and services are consistent with the tax-exempt status of associations and are the primary reason for joining for most members. They expect to be advised of their availability and cost by fax and other means. Indeed, it is a benefit they are paying for through their dues. In addition, NFDA, like many associations, has opt-out rules already in place for member communications.

NFDA believes that these conditions support an exemption from the opt-out notice requirement for professional and trade associations, as permitted by the Act. NFDA is not aware of any evidence to support the belief that fax communications between trade associations and their members are the "unsolicited advertisements" that are the target of the Act, or that such an exemption would impair the ability of association members to stop faxes of any kind from an association.

Unsolicited Advertisement

The Commission proposes to amend the definition of “unsolicited advertisement” to require a recipient’s “prior express invitation or permission, in writing or otherwise” before such an advertisement could be sent to him or her. This is an intent test, requiring the fax sender to know the recipient’s state of mind.

NFDA believes that instead of attempting to define such a subjective and difficult to apply test, a better approach is to establish safe harbors that create the presumption that permission exists. The Commission should permit membership in a trade or professional association to qualify as consent to receive faxes from the association. Other safe harbors could be the inclusion of the recipient’s fax number on a membership application or contact information form, or on the recipient’s letterhead, business card or fax cover sheet.

NFDA believes that this approach is consistent with the Act, with a recipient’s intent with respect to the availability and use of a fax number, and far more practical.

Conclusion

NFDA appreciates the opportunity to comment on the proposed rule. Please include these comments in the record of the Federal Communications Commission proceedings on this matter.

Sincerely,



William A. Isokait
Director of Advocacy