Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Rules and Regulations Implementing the	)	CG Docket No. 02-278
Telephone Consumer Protection Act of 1991	)	CG Docket No. 05-338
	)	
Junk Fax Prevention Act of 2005	)	

COMMENTS OF REED ELSEVIER INC.

I. Background and Introduction

Reed Elsevier Inc. ("Reed Elsevier"), by and through its attorneys, respectfully submits these comments in response to the Federal Communications Commission's Notice of Proposed Rulemaking concerning implementation of the amendments made by the Junk Fax Prevention Act of 2005 under the Rules and Regulations Implementing the Telephone Consumer Protection Act ("TCPA") of 1991.[1] Reed Elsevier is one of the world's leading publishing and information companies, employing more than 20,000 people in the United States, and more than 35,000 worldwide. Reed Elsevier provides critical information in both hard copy and electronic formats to the government, scientific, legal, educational, and business communities.

Within these market segments, Reed Elsevier offers a wide array of information-driven services and solutions to businesses. Reed Elsevier businesses and services include:

- Reed Business Information ("RBI"), the largest business-to-business publisher in the United States. RBI provides critical information and marketing solutions to business professionals in the media, manufacturing, electronics, construction and retail industries. RBI maintains a long tradition of providing business information

[1] 70 Fed. Reg. 75102 (proposed December 19, 2005) (to be codified at 47 C.F.R. pt. 64).

through more than 135 business-to-business publications, over 125 Webzines and Web portals, as well as online services, custom publishing, directories, and research;

- Reed Exhibitions, the world's leading organizer of trade and consumer events with more than 470 events in 29 countries;
- LexisNexis, a leading electronic information provider to law offices, corporate legal departments, and governmental agencies;
- Elsevier, a leading publisher and disseminator of literature covering a broad spectrum of scientific endeavors, including such fields as medicine, computer, life and environmental sciences, and mathematics;
- Martindale-Hubbell, which publishes the leading directory of legal professionals; and
- Matthew Bender & Company, Inc., a renowned publisher of books and CD-ROMs containing primary and secondary materials used by the legal market.

In Reed Elsevier's experience, its business, professional, and government customers respond favorably to all types of marketing, including fax marketing when performed responsibly. Reed Elsevier would like to make the following points in response to the Commission's Notice of Proposed Rulemaking:

- The Commission should preserve the ability of businesses to send fax advertisements where an established business relationship ("EBR") exists with no time duration on the length of such relationship.
- The Commission should not prescribe further restrictions around what is meant by providing fax numbers in the context of an established business relationship because the statute specifies when an unsolicited fax may be sent to a recipient based on the source of a fax number.
- The Commission should allow 30 days for senders of unsolicited faxes to honor do-not-fax requests.
- The Commission should allow businesses the flexibility to determine the "cost-free" mechanism to transmit a do-not-fax request while providing businesses with certainty that specific types of mechanisms, including e-mail, toll-free numbers, local telephone numbers where the call is not a toll call, and traditional mail, satisfy the requirements.

II. The FCC Should Preserve the Ability of Businesses to Send Unsolicited Fax Communications to Recipients with Whom an Established Business Relationship Exists With No Time Duration.

A. The Junk Fax Prevention Act requires that the FCC evaluate whether there is a record of abuse of sending faxes in the context of an established business relationship before limiting the duration of such relationship.

The Commission asks whether "it is appropriate to limit the EBR duration for unsolicited facsimile advertisements in the same manner as telephone solicitations."[2] We do not believe that the duration of the EBR as done for unsolicited telephone solicitations is appropriate in this context. At the time of enactment of the Junk Fax Prevention Act (the "Act"),[3] Congress was fully aware of the 3-month and 18-month EBR time durations for telephone solicitations and elected not to adopt that framework. Instead, Congress provided the Commission with authority to set a duration only if several factors were evaluated and there was a record of complaints to justify such a limitation.

Limiting the duration of the EBR as done for unsolicited telephone solicitations is not appropriate in the fax context because fax communications are regulated differently than telemarketing communications. Most significantly, the overwhelming majority of legal faxes sent in the context of an established business relationship are business-to-business communications. The national Do-Not-Call registry and corresponding time limits on the EBR exception apply only to business-to-consumer telephone solicitations. There are no analogous limitations restricting business-to-business telephone solicitations. Such unsolicited

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[2] 70 Fed. Reg. 75106.

[3] Pub. L. No. 109-21, 119 Stat. 359 (2005), codified at section 227 of the Communications Act of 1934, 47 U.S.C. § 227.

communications are generally permitted and not limited like fax solicitations, in the first instance, to communications where an established business relationship exists.

Congress recognized this distinction between fax solicitations and telephone solicitations and, for this reason, in enacting the Junk Fax Prevention Act, Congress determined that there should be no time limit on the duration of the EBR unless several criteria are evaluated.[4] First, the Commission must determine whether the existence of the established business relationship "has resulted in a significant number of complaints to the Commission regarding the sending of unsolicited advertisements to telephone facsimile machines."[5] Congress, in defining this criterion, clearly did not want to impose time limits if there was no basis for concern. The Commission should allow for a significant period of time to elapse to evaluate complaints received following enactment of the Junk Fax Prevention Act.

Although the statute provides the Commission with authority to begin to evaluate whether to limit the duration of an EBR just three months after enactment, it is premature for the Commission to determine whether the EBR has resulted in the requisite complaints because the EBR that was enacted by Congress is different from the one that had been in effect under the Commission's rules. In enacting the Junk Fax Prevention Act, Congress provided a new right of recipients to opt out of faxes even in instances where there exists an established business relationship. The Commission cannot yet make an adequate determination as to whether a time duration is necessary in light of this new right. The effect of this new right should be included in the Commission's analysis of any time duration. Reed Elsevier and its divisions, as a matter of

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[4] *Id.* at sec. 2(f), § (G)(i), 119 Stat. 361.

[5] *Id.* at sec. 2(f), § (G)(i)(I), 119 Stat. 362.

practice, provide the ability of recipients not to receive further fax solicitations and, in our experience, recipients are satisfied with this ability.

Thus, once this right of consumers becomes effective, the Commission should evaluate any complaints it receives to also include this scenario. The legal right of consumers to opt out of messages, even in the context of an established business relationship, should result in fewer, if any, complaints from recipients as well as provide a legal remedy against senders that do not honor such a request.

Second, the Act requires the Commission to determine whether "a significant number of any such complaints involve unsolicited advertisements that were sent on the basis of an established business relationship that was longer in duration than the Commission believes is consistent with the reasonable expectations of consumers."[6] In order for a time duration to be implemented by the Commission, the record should indicate that there is an abusive record of the sending of unwanted faxes in the context of an established business relationship, and also indicate that such conduct occurs in such a manner that would justify a time duration. Such a record presumably would indicate that any problem identified results from an established business relationship without a time limit.

In this context, again, the Commission also should evaluate whether the individuals complaining have exercised their right in the context of an established business relationship not to receive further faxes. If so, both the Commission and the recipient would have a remedy for receipt of such faxes and, therefore, no need for a time duration.

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[6] *Id.* at sec. 2(f), § (G)(i)(II).

Third, the Act requires the Commission to evaluate the costs to senders of "demonstrating the existence of an established business relationship within a specified period of time and the benefits to recipients of establishing a limitation on such established business relationship."[7] Congress recognized that there may be costs associated with demonstrating compliance with an established business where a time limit exists. Businesses would be required to maintain records as to when such a relationship begins and limit communications based on the time frame. Such a requirement would be both costly and burdensome for businesses to implement and maintain, and Congress did not want to impose such costs if there was no demonstrated benefit.

Finally, the Commission must "determine whether with respect to small businesses, the costs associated with a specific time frame would not be unduly burdensome."[8] Here Congress did not want to impose unnecessary costs on the many small businesses that rely on fax communications.

B. A time duration on the EBR would limit important and legitimate fax communications.

More significant than the costs associated with demonstrating the existence of an established business relationship, a time duration on the established business relationship would unnecessarily limit legitimate and critical business communications. The Commission asks whether the 18-month/3-month time limit for the duration of an established business relationship that applies in the context of the national Do-Not-Call list would be appropriate in this context. Imposition of such a time duration in this context would limit communications sent in the business-to-business context where a relationship may extend beyond 18 months. For example,

[7] *Id.* at sec. 2(f), § (G)(i)(III).

Reed Exhibitions, the world's leading organizer of trade shows, relies on unsolicited fax communications to promote its shows. Reed Exhibitions sends approximately 3.65 million faxes to 700,000 participants, both exhibitors and attendees, at 33 shows in the U.S. Generally, Reed Exhibitions will send a fax to recipients who have attended a prior show or similar show that the recipient is likely to be interested in attending. In some instances, a show may occur every other year or an individual may not attend one year of an annual conference. If the Commission were to set a time frame of 18 months, in instances where a recipient had attended a trade show one year and then skipped a year, Reed Exhibitions would not be able to send that individual a fax announcement of the next year's show under an established business relationship exception from the general prohibition on the sending of unsolicited faxes. Such a result would benefit neither the recipient nor Reed Exhibitions.

III. The Commission Should Not Set Forth Additional Restrictions to Those Specified in the Statute as to What Is Meant By Providing Fax Numbers in the Context of an Established Business Relationship.

The Commission asks whether it should "establish parameters defining what it means for a person to provide a facsimile number 'within the context of [an] established business relationship,"[9] specifically determining under what circumstances a person has "'voluntarily' agreed to allow [a fax number] to be made publicly available."[10] If the Commission does establish such parameters, we do not believe that they should result in further limitations on the sending of faxes subject to an EBR.

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[8] *Id.* at sec. 2(f), § (G)(i)(IV).

[9] 70 Fed. Reg. 75105.

[10] *Id.*

The Act defines with specificity how a number must be obtained in order to send faxes where an EBR exists. It is clear that if the number is provided in the context of an established business relationship, then it may be used. For the communication to not be voluntary, the sender of the fax would have to coerce the recipient against his will into providing the number. The sender of the fax also can send a fax where there exists an established business relationship and the fax number was obtained from "a directory, advertisement, or site on the Internet to which the recipient voluntarily agreed to make available its facsimile number for public distribution."[11] If a business or individual voluntarily posts a fax number on a website, for example, implicit in such posting is that the possessor of the fax number could receive unsolicited fax communications to that number.

Similarly, if a fax number is listed in a directory, which an individual reasonably can assume is public, such as, for example, in a Martindale-Hubbell legal directory, senders can assume that such a number was voluntarily provided for public distribution. Thus, senders should not be required to confirm with an entity that compiles public directories that the numbers are intended to be public.

IV. The Commission Should Create Safe Harbors Allowing for Certain Means of Opt-Out to Satisfy the Statutory Requirement for Cost-Free Mechanisms.

The Commission also seeks comment concerning whether it should enumerate specific "cost-free" mechanisms for a recipient to transmit a do-not-fax request and, if so, what those mechanisms should be.[12]

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[11] *Id.*

[12] 70 Fed. Reg. 75107.

The language of the statute itself specifies that the sender must establish a "cost-free" mechanism for a recipient to transmit a do-not-fax request.[13] Therefore, we believe that it is unnecessary for the Commission to specify certain cost-free mechanisms, the enumeration of which may suggest that the use of other cost-free mechanisms would not constitute compliance. Rather, the Commission should establish safe harbors so that senders definitively could ascertain whether the cost-free mechanism it establishes is in compliance with the Commission's rule.

Such safe harbors should, at a minimum, include toll-free telephone numbers, local telephone numbers where the call is not a toll call, e-mail addresses, and postal addresses. Consistent with the statutory cost-free mechanism provision, the aforementioned safe harbors would "permit an individual or business to make such a request at any time on any day of the week."[14] All of the means of communication suggested in this safe harbor context would effectuate one of the underlying purposes of the statute by providing a convenient, cost-free method for recipients to opt out of further communications.

V. The Commission Should Allow 30 Days for Senders of Unsolicited Facsimile Advertisements to Honor a Do-Not-Fax Request.

The Commission requests comment on the "shortest reasonable time" that a sender of unsolicited faxes should have to act upon an opt-out request. We believe that 30 days is the appropriate time frame for honoring such requests. In some instances, it can take up to 30 days to process an opt-out and to ensure that the opt-out is applied to all lists containing information on the requestor. Moreover, in our experience, there is no evidence of recipients complaining

[13] Pub. L. No. 109-21 sec. 2(c),.§ (D)(iv)(II), 119 Stat. 360.

[14] *Id.* at sec. 2(c), § (D)(v), 119 Stat. 361.

about continuing to receive fax communications after they have opted out that would indicate that a shorter time frame is necessary.

VI. Conclusion

For the reasons stated above, the Commission should not limit the duration of or parameters surrounding an established business relationship. In addition, the Commission should allow 30 days to honor do-not-fax requests and preserve the flexibility for businesses to determine the cost-free mechanism by which to receive such requests.

Reed Elsevier thanks the Commission for the opportunity to provide these comments on the NPRM, and we look forward to continuing to work with the Commission in this rulemaking.

Respectfully submitted,

REED ELSEVIER INC.

Steven M. Manzo
Vice President, Government Affairs
Steven M. Emmert
Director, Government & Industry Affairs

Emilio W. Cividanes
Venable LLP
575 Seventh Street, NW
Washington, DC 20004
(202) 344-4414

Stuart P. Ingis
Alisa M. Bergman
DLA Piper Rudnick Gray Cary US LLP
1200 19th Street NW
Washington, DC 20036
(202) 861-3900

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