American Road & Transportation Builders Association

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January 18, 2006

Office of the Secretary
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.

On behalf of the 5,000 members of the American Road and Transportation Builders Association (ARTBA), I respectfully offer comments on the rules and regulations implementing the Telephone Consume Protection Act of 1991 (TCPA) in accordance with the December 19, 2005 *Federal Register* Notice.

ARTBA's membership includes public agencies and private firms and organizations that own, plan, design, supply and construct transportation projects throughout the country. Our industry generates more than $200 billion annually in U.S. economic activity and sustains more than 2.2 million American jobs. As a non-profit trade association that interacts with thousands of members across the United States, ARTBA undertakes a variety of activities in service to our membership that are directly affected by the TCPA.

The Federal Communications Commission (FCC) has requested specific comments on a variety of areas concerning amendments made to the TCPA by the recently enacted "Junk Fax Prevention Act of 2005" (JFPA). While ARTBA is pleased to address each of these issues, as a general rule, the JFPA should not be implemented in a manner that prevents trade associations from interacting with and fulfilling their obligations to association members through the use of fax messaging.

Recognition of an Existing Business Relationship Exemption

The first area for comment is the recognition of the existence of an "exiting business relationship" (EBR). The FCC has proposed removing the requirement that fax senders obtain a signed, written statement from fax recipients with whom they already have an EBR indicating their consent to receive fax messages. ARTBA strongly supports this proposal. Trade associations rely heavily on fax messaging to relay information to their members. Upon joining a trade association members are not only consenting to, but expecting to receive pertinent information about their industry by fax, email, and a variety of other avenues of communication. Requiring a separate consent form for fax

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PRIDE in Transportation Construction
THE ARTBA BUILDING, 1219 28TH ST., N.W., WASHINGTON, D.C. 20007
Phone: (202) 289-4434 • Fax: (202) 289-4435 • Internet: www.artba.org

messages would be needlessly duplicative and could prevent trade association members from taking full advantage of the groups they freely choose to join.

The FCC has also asked when a fax number should be considered to be provided within the context of an EBR. ARTBA believes that a broad view is best here. Trade associations rely on many different sources in order to both compile and obtain information about their members. Most often, companies provide this information directly to the trade association upon becoming a member. Membership directories, industry specific internet sites and trade publications are also areas where fax numbers are given and may be obtained. If a fax number is listed as a part of one of these sources, it should be considered to as "provided" within the context of an EBR. The purpose of allowing a fax number to be listed in a directory, internet site or trade publication is to allow for a point of contact with other members of that industry. To restrict this would be to place an unfair burden on members of any industry which might want to communicate with or be informed about the activities of each other.

The Commission has also asked how it should verify that fax numbers were voluntarily obtained prior to the enactment of the JFPA. ARTBA believes that requiring such verification would be very unwieldy, but if the commission chooses such a course, listing in any of the aforementioned forums (membership application forms, directories, internet sites, trade publications, etc.) should be enough for verification that the fax number was voluntarily provided.

Definition of an Existing Business Relationship

Comments were further requested on a proposal to place a time limit on EBR's. ARTBA urges the FCC not to take such an action. EBR's should be limited by the parties involved, not by the FCC or any other regulatory body. The time in which a trade association has an EBR with a member differs from member to member. Some members may be part of the association for one year, others for decades. To require the repeated renewal of an EBR over the course of a member's participation in an association places a burden on both the member and the association. A member who allows an EBR to lapse could be deprived of valuable information about their industry. At the same time, requiring trade associations to keep a record of when EBR's began with each member would place a very heavy administrative burden upon their personnel, as many associations have thousands of members.

Further, when an association member renews their membership, that should be enough to consider the EBR between the association and that member renewed as well.

Notice of Opt-Out Opportunity

The FCC has asked whether or not it should provide rules as to what constitutes a "clear and conspicuous" opt-out notice on a fax message. ARTBA feels that the issuance of such a rule would be a useful way to prevent frivolous litigation over the validity of "opt-out" notices. Further, if such a rule is issued by the FCC, it should provide that a

statement on the cover sheet or first page of the fax message is sufficient to satisfy a "clear and conspicuous" standard. The Commission has also asked whether or not the current definition of "shortest reasonable time," which is thirty days, should be reduced in regards to when an "opt-out" notice must be honored. ARTBA urges that the thirty day time limit be preserved. Many trade associations use third parties to facilitate fax messaging and also often have multiple messaging lists. Thus, it can sometimes take a period of weeks to completely remove a fax number from all of a trade association's fax lists. Shortening this time limit would increase the chance for error and reduce the overall effectiveness of the JFPA.

The Commission has further requested comment on the requirement that senders of fax messages identify themselves and the telephone number of the sending machine. This is a reasonable requirement, and identification on the cover sheet or first page of a fax message should provide sufficient identification of the sender. Also, the FCC has asked whether it should provide guidance as to what is considered a "cost-free" mechanism through which recipients can opt-out of receiving future fax messages. Such guidance would be very useful and would help to prevent unnecessary litigation over whether or not the "cost-free" requirement has or has not been fulfilled. If such guidance is offered, ARTBA urges that an e-mail address or website, toll-free telephone number, and local telephone number in cases where the fax message is sent to a local recipient all satisfy the "cost-free" requirement. Each of these options give message recipients a cost-free way to opt-out of receiving future fax messages and are also already in use by many national trade associations today.

Request to Opt-Out of Future Unsolicited Advertisements

The Commission has asked whether a request to opt-out of receiving fax messages should terminate the EBR between the sender and the recipient. ARTBA urges that this not be the case. With national trade associations, members receive fax messages on a variety of topics. Some may be industry related advertisements, others may be economic reports, regulatory updates or other relevant information. Termination of the EBR on the account of an association member not wishing to receive a specific type of information would result in the association also not being able to send desired materials. This would unfairly burden both the association and the association member. Unless a request by the member is made not to receive any and all future fax messages, a "do-not fax" request should be read to apply only to the type of fax that was sent (e.g., advertisements).

The FCC has also asked if there are other methods by which a "do not fax" request should be allowed. "Do not fax" requests should be kept to the cost-free mechanisms listed above. This allows the association to effectively monitor and honor such requests. If a "do not fax" request is made by means other than the cost-free mechanisms listed on an associations fax cover sheet, it may compromise internal processes developed to respect such requests. This further illustrates the need for the Commission to provide guidance on acceptable methods by which a recipient can make a "do-not fax" request.

Finally, the Commission has asked what should happen when a recipient who had previously submitted a "do not fax" request asks to begin receiving fax messages again. In this case, the EBR between sender and recipient should be considered restored for the type of fax or information at issue. If the recipient wants to cease receiving future fax messages, another "do not fax" request can be made and it should be honored.

Authority to Establish Nonprofit Exemption

The Commission has asked for comment on whether or not to allow "professional or trade organizations that are tax-exempt nonprofit organizations to send unsolicited advertisements to their members in furtherance of the associations' tax-exempt purpose that do not contain the 'opt-out' notice required by the [JFPA]." ARTBA strongly urges the creation of such an exception. The JFPA was intended to prevent the sending of unsolicited and unwanted "junk" faxes. Trade associations and their members have entered into a willing relationship with one another. Conveying information to individuals that voluntarily chose to join an organization is one of the core missions of trade associations. These activities include informational updates on relevant legislative and regulatory matters, technical support for business activities, and information on association products and services for which members are eligible. Denying trade association members access to these services not only impinges on their rights, but undermines the business relationship they entered upon joining an association.

As to the absence of an opt-out notice, association members have an open line of communication with the association they belong to. It is part of the proverbial "price of admission." If an association member wants to be removed from fax lists, they can call, write, or email the association and they will be removed. It would run counter to the association's interests to do otherwise as they would be engaging in bed member service. The appropriate e-mail, address or phone number by which the member can reach the association is easily available in most cases as it is on association mailings, e-mails and, if applicable, the association website.

ARTBA does not believe that the JFPA was created to prevent members of professional associations from communicating with each other. Rather, its goal is to prevent the proliferation of unwanted fax messages. Providing an exemption for trade associations does not diminish this goal. Instead, it would help ease the burden on parties that have willingly entered into a relationship with each other where fax messaging is an expected method of relaying industry related information. Such a decision would also allow the Commission to focus on the true intent of the JFPA – cracking down on junk faxes.

Unsolicited Advertisement

Finally, the Commission has asked whether the permission granted to receive advertisements by fax must be in writing or if other forms of permission should be allowed. ARTBA urges a broad interpretation of permission to receive fax advertisements. Requiring written permission to receive fax messages would place a heavy record-keeping burden on trade associations, many of which have thousands of

members. Rather, permission to receive fax messages should be allowed to be granted orally or inferred through the EBR established upon joining an association. Such an interpretation of the permission element of the JFPA would both allow associations to continue to effectively relay information to their members and not increase the amount of unwanted faxes. In addition, advertisements contain opt-out information – providing recipients an opportunity to request not to receive such materials.

ARTBA appreciates the opportunity to offer comments on this variety of areas of the TCPA concerning the implementation of the JFPA and urges to FCC to be mindful of the rights of national associations and their members in their efforts to combat unwanted fax messages.

Sincerely,

T. Peter Ruane

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President & C.E. O.