

example, a receipt or invoice, the primary purpose of which is to confirm the purchase of certain items by the facsimile recipient, is not an advertisement of the commercial availability of such items. Similarly, messages containing account balance information or other type of account statement which, for instance, notify the recipient of a change in terms or features regarding an account, subscription, membership, loan or comparable ongoing relationship, in which the recipient has already purchased or is currently using the facsimile sender's product or service, is not an advertisement. Communications sent to facilitate a loan transaction, such as property appraisals, summary of closing costs, disclosures (such as the Good Faith Estimate) and other similar documents are not advertisements when their purpose is to complete the financial transaction.¹⁷⁷ A travel itinerary for a trip a customer has agreed to take or is in the process of negotiating is not an unsolicited advertisement. Similarly, a contract to be signed and returned by the agent or traveler that is for the purpose of closing a travel deal is not an advertisement for purposes of the prohibition.¹⁷⁸ A communication from a trade show organizer to an exhibitor regarding the show and her appearance will not be considered an unsolicited advertisement, provided the exhibitor has already agreed to appear.¹⁷⁹ We also conclude that a mortgage rate sheet sent to a broker or other intermediary or a price list sent from a wholesaler to a distributor (*e.g.*, food wholesaler to a grocery store) for the purpose of communicating the terms on which a transaction has already occurred are not advertisements.¹⁸⁰ A subscription renewal notice would be considered "transactional" in nature, provided the recipient is a current subscriber and had affirmatively subscribed to the publication. Finally, a notice soliciting bid proposals on a construction project would not be subject to the facsimile advertising prohibition, provided the notice does not otherwise contain offers for products, goods, and services. Similarly, bids in response to specific solicitations would not be covered by the rules, as such communications are presumably to facilitate a commercial transaction that the recipient has agreed to enter into by soliciting the bids.

50. In order for such messages to fall outside the definition of "unsolicited advertisement," they must relate specifically to existing accounts and ongoing transactions. Messages regarding new or additional business would advertise "the commercial availability or quality of any property, goods, or services..." and therefore would be covered by the prohibition.¹⁸¹ Thus, applications and materials regarding educational opportunities and conferences sent to persons who are not yet participating or enrolled in such programs are unsolicited advertisements and require the recipient's permission or the existence of an established business relationship before faxing the recipient such information.¹⁸² Similarly, a rate sheet on financial products transmitted to a *potential* borrower or *potential* brokers

¹⁷⁷ See Financial Services Coalition Petition for Reconsideration at 4-7, filed August 25, 2003.

¹⁷⁸ However, we find that messages regarding travel deals, bonus commission offers and other promotional information are advertisements and would require the recipient's express permission in the absence of an established business relationship. See Travel Industry Group Petition for Reconsideration at 4, 6, filed August 25, 2003.

¹⁷⁹ See, *e.g.*, Reed Elsevier Petition for Reconsideration at 4, filed August 25, 2003.

¹⁸⁰ Commercial facsimile messages that advertise the commercial availability or quality of property, goods, or services, but purport to be "price sheets" or "rate sheets" in order to evade the TCPA rules, are nevertheless unsolicited advertisements, if not sent for the purpose of facilitating, completing, or confirming an ongoing transaction.

¹⁸¹ See 47 U.S.C. § 227(a)(4).

¹⁸² Such communications nevertheless could be sent to recipients with whom the sender has an EBR, so long as they also comply with the other statutory provisions, including the opt-out notice requirements.

would not be considered merely “transactional” in nature and would require the sender to either have an established business relationship with the recipient or first obtain express permission from the recipient.

51. In response to arguments that a *de minimis* amount of advertising information should not convert a communication into an “unsolicited advertisement,”¹⁸³ we conclude that a reference to a commercial entity does not by itself make a message a commercial message. For example, a company logo or business slogan found on an account statement would not convert the communication into an advertisement, so long as the primary purpose of the communication is, for example, to relay account information to the fax recipient.¹⁸⁴

4. Offers for Free Goods and Services and Informational Messages

52. We conclude that facsimile messages that promote goods or services even at no cost, such as free magazine subscriptions, catalogs, or free consultations or seminars, are unsolicited advertisements under the TCPA’s definition.¹⁸⁵ In many instances, “free” seminars serve as a pretext to advertise commercial products and services. Similarly, “free” publications are often part of an overall marketing campaign to sell property, goods, or services. For instance, while the publication itself may be offered at no cost to the facsimile recipient, the products promoted within the publication are often commercially available. Based on this, it is reasonable to presume that such messages describe the “quality of any property, goods, or services.”¹⁸⁶ Therefore, facsimile communications regarding such free goods and services, if not purely “transactional,” would require the sender to obtain the recipient’s permission beforehand, in the absence of an EBR.

53. By contrast, facsimile communications that contain only information, such as industry news articles, legislative updates, or employee benefit information, would not be prohibited by the TCPA rules. An incidental advertisement contained in a newsletter does not convert the entire communication into an advertisement.¹⁸⁷ Thus, a trade organization’s newsletter sent via facsimile would not constitute an unsolicited advertisement, so long as the newsletter’s primary purpose is informational, rather than to promote commercial products. We emphasize that a newsletter format used to advertise products or

¹⁸³ See Financial Services Coalition Petition for Reconsideration at 13, filed August 25, 2003; Travel Industry Group Petition for Reconsideration at 14, filed August 25, 2003.

¹⁸⁴ See Wells Fargo Petition for Reconsideration at 3, filed August 25, 2003; Travel Industry Group Petition for Reconsideration at 14, filed August 25, 2003.

¹⁸⁵ See Proximity Marketing Request for Clarification at 7, 12, filed August 25, 2003.

¹⁸⁶ See 47 U.S.C. § 227(a)(4).

¹⁸⁷ See Air Conditioning Contractors Petition for Reconsideration at 2-3, filed August 12, 2003. In determining whether an advertisement is incidental to an informational communication, the Commission will consider, among other factors, whether the advertisement is to a bona fide “informational communication.” In determining whether the advertisement is to a bona fide “informational communication,” the Commission will consider whether the communication is issued on a regular schedule; whether the text of the communication changes from issue to issue; and whether the communication is directed to specific regular recipients, *i.e.*, to paid subscribers or to recipients who have initiated membership in the organization that sends the communication. We may also consider the amount of space devoted to advertising versus the amount of space used for information or “transactional” messages and whether the advertising is on behalf of the sender of the communication, such as an announcement in a membership organization’s monthly newsletter about an upcoming conference, or whether the advertising space is sold to and transmitted on behalf of entities other than the sender.

services will not protect a sender from liability for delivery of an unsolicited advertisement under the TCPA and the Commission's rules. We will review such newsletters on a case-by-case basis should they be brought to our attention.

54. Finally, we conclude that any surveys that serve as a pretext to an advertisement are subject to the TCPA's facsimile advertising rules.¹⁸⁸ The TCPA's definition of "unsolicited advertisement" applies to any communication that advertises the commercial availability or quality of property, goods or services, even if the message purports to be conducting a survey.¹⁸⁹

5. Petitions for Reconsideration on EBR exemption

55. We also take this opportunity to dismiss as moot, any pending petitions, or parts thereof, that seek reconsideration of the Commission's determination that an established business relationship will no longer be sufficient to show that an individual or business has given prior express permission to receive unsolicited facsimile advertisements and those that seek reconsideration of the written permission requirement in section 64.1200(a)(3)(i) of the Commission's rules.¹⁹⁰ The Junk Fax Prevention Act codifies an established business relationship exception to the prohibition on sending unsolicited facsimile advertisements; therefore, such petitions are now moot.¹⁹¹

G. Private Right of Action

56. The TCPA provides consumers with a private right of action in state court for any violation of the TCPA's prohibitions on the use of automatic dialing systems, artificial or prerecorded voice messages, and unsolicited facsimile advertisements.¹⁹² Westfax raises concerns about class action lawsuits brought under the TCPA and asks the Commission to clarify the parameters of the private right of action.¹⁹³ As the Commission has stated in previous orders, Congress provided consumers with a private right of action, "if otherwise permitted by the laws or rules of court of a State." This language suggests that Congress contemplated that such legal action was a matter for consumers to pursue in appropriate state courts, subject to those state courts' rules.¹⁹⁴ We continue to believe that it is for Congress, not the Commission, either to clarify or limit this right of action. Therefore, we decline to make any determinations about the specific contours of the private right of action.

H. Effective Date of Rules

57. The record reveals that facsimile senders may need additional time beyond 30 days to

¹⁸⁸ See 47 U.S.C. § 227(a)(4) and 47 C.F.R. § 64.1200(f)(10); see also Travel Industry Group Petition for Reconsideration at 14-15, filed August 25, 2003.

¹⁸⁹ See 47 U.S.C. § 227(a)(4).

¹⁹⁰ See *infra*, Appendix C, List of Petitions Filed.

¹⁹¹ See *infra*, para. 66.

¹⁹² 47 U.S.C. § 227(b)(3).

¹⁹³ Westfax Comments at 5-6.

¹⁹⁴ See 2003 TCPA Order, 18 FCC Red at 14136, para. 206.

comply with the rules adopted herein.¹⁹⁵ For example, senders will need to ensure that opt-out contact information is provided on all facsimile advertisements. They also will need to put in place mechanisms to allow recipients to opt-out of unwanted facsimile advertisements and establish procedures for removing facsimile numbers for individuals that have opted out of such advertisements. We believe it is important to provide adequate time for senders to come into compliance with the rules adopted in this order. Therefore, the amended facsimile advertising rules will become effective within 90 days of date of publication in the Federal Register.¹⁹⁶

I. Filings in Response to this Order

58. The Commission recently opened a new docket—CG Docket No. 05-338—and asked that all filings addressing the facsimile advertising rules be filed in the new docket.¹⁹⁷ Any filings in response to this Report and Order also should be filed in CG Docket No. 05-338.

IV. PROCEDURAL ISSUES

A. Paperwork Reduction Act

59. The *Report and Order* contains new information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. It will be submitted to the Office of Management and Budget (OMB) for review under Section 3507(d) of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the new information collection requirements contained in this proceeding.

60. In addition, pursuant to the Small Business Paperwork Review Act of 2002, Public Law No. 107-198, *see* 44 U.S.C. § 3506(c)(4), in this present document we have assessed the effect of rule changes and find that there likely will be an increased administrative burden on businesses with fewer than 25 employees. We have taken steps to minimize the information collection burden for small business concerns, including those with fewer than 25 employees. The rules adopted herein do not to require the maintenance of specific records for the sending of facsimile advertisements. We also decline to limit the duration of the EBR which might have resulted in an increase in recordkeeping burden for entities sending fax advertisements on the basis of an EBR. These measures should substantially alleviate any burdens on businesses with fewer than 25 employees.

B. Congressional Review Act

61. The Commission will send a copy of this *Report and Order and Third Order on Reconsideration* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. § 801(a)(1)(A).

¹⁹⁵ Huntington Natl Bank at 8 (suggesting a one-year compliance period); SHRM Comments at 10 (supports a 90-day period for organizations to come into compliance); CBA Comments at 16 (suggesting a year)

¹⁹⁶ Those rules requiring OMB approval under the Paperwork Reduction Act are not effective until approved by OMB.

¹⁹⁷ *See JFPA NPRM* at para. 27.

C. Accessible Formats

62. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at (202) 418-0530 (voice) or (202) 418-0432 (TTY). This *Report and Order and Third Order on Reconsideration* can also be downloaded in Word and Portable Document Format (PDF) at <http://www.fcc.gov/cgb/policy>.

D. Final Regulatory Flexibility Analysis

63. Pursuant to the Regulatory Flexibility Act of 1980, as amended,¹⁹⁸ the Commission's Final Regulatory Flexibility Analysis regarding the *Report and Order and Third Order on Reconsideration* is attached as Appendix B.

V. ORDERING CLAUSES

64. Accordingly, IT IS ORDERED that, pursuant to the authority contained in sections 1-4, 201, 202, 217, 227, 258, 303(r), and 332 of the Communications Act of 1934, as amended; 47 U.S.C. §§ 151-154, 201, 202, 217, 227, 258, 303(r), and 332; and sections 64.1200 and 64.318 of the Commission's Rules, 47 C.F.R. §§ 64.1200 and 64.318, the *Report and Order and Third Order on Reconsideration* IS ADOPTED, and Part 64 of the Commission's rules, 47 C.F.R. § 64.1200, IS AMENDED as set forth in Appendix A.

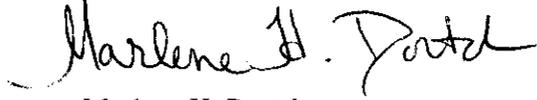
65. IT IS FURTHER ORDERED that the rules and requirements contained in this *Report and Order and Third Order on Reconsideration* and in Appendix A SHALL BECOME EFFECTIVE within 90 days of publication in the Federal Register. Those rules and requirements which contain information collection requirements under PRA are not effective until approved by OMB.

66. IT IS FURTHER ORDERED, that certain petitions for reconsideration and/or clarification of the facsimile advertising rules in CG Docket No. 02-278 ARE DENIED in part, GRANTED in part, and DISMISSED in part, as set forth herein. Specifically, those petitions filed by Air Conditioning Contractors of America, American Association of Advertising Agencies, *et al.*, American Business Media, American Dietetic Association, American Society of Association Executives, American Tire Distributors, Inc., America's Community Bankers, Association of Small Business Development Centers, California Association of Realtors, Chamber of Commerce of the U.S., *et al.*, Coalition for Healthcare Communication, Consumer Bankers Association, Consumer Electronics Association, Copia International, LTC, Faxis, Inc., Federal Election Commission, Financial Services Coalition, Independent Insurance Agents and Brokers of America, Independent Sector, Jobson Publishing, LLC, Maryland Association of Nonprofit Organizations, John Mayhill, National Association of Chain Drugstores, National Association of Realtors, National Retail Federation, Newsletter & Electronic Publishers Association, Newspaper Association of America, Presidential Classroom for Young Americans, Inc., Produce Marketing Association, Proximity Marketing, Reed Elsevier, Inc., Scholastic, Inc., State and Regional Newspaper Associations, Travel Industry Group, Wells Fargo & Co., and Yellow Pages Integrated Media Association ARE DISMISSED to the extent they seek reinstatement of the established business relationship exemption.

¹⁹⁸ See 5 U.S.C. § 604.

67. IT IS FURTHER ORDERED that the Commission's Consumer & Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of the *Report and Order and Third Order on Reconsideration* to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

A handwritten signature in black ink, reading "Marlene H. Dortch". The signature is written in a cursive style with a large, sweeping initial "M".

Marlene H. Dortch
Secretary

Appendix A**Final Rules**

Part 64 of the Code of Federal Regulations is amended as follows:

PART 64 – MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

1. The authority citation for part 64 continues to read as follows:

Authority: 47 U.S.C. 154, 254(k); secs. 403(b)(2)(B), (C), Public Law 104-104, 110 Stat. 56. Interpret or apply 47 U.S.C. 201, 218, 222, 225, 226, 228, and 254 (k) unless otherwise noted.

* * * * *

2. Subpart L is amended by revising the Subpart Heading L to read as follows:

Subpart L – Restrictions on Telemarketing, Telephone Solicitation, and Facsimile Advertising

* * * * *

3. Section 64.1200 is amended to remove paragraph (a)(3)(i).

* * * * *

4. Section 64.1200 is amended by removing the note for paragraph (f)(3) that reads as follows:

Paragraph 64.1200(f)(3) is stayed as of October 1, 2003, as it applies to the time limitations on facsimile advertisements. The Federal Communications Commission will publish a document in the Federal Register when the stay is lifted.

* * * * *

5. Section 64.1200 is revised to read as follows:

§ 64.1200 Delivery restrictions.

(a) * * *

(1) * * *

(2) * * *

(3) Use a telephone facsimile machine, computer, or other device to send an unsolicited advertisement to a telephone facsimile machine, unless –

(i) the unsolicited advertisement is from a sender with an established business relationship, as defined in paragraph (f)(5) of this section, with the recipient; and

(ii) the sender obtained the number of the telephone facsimile machine through –

- (A) the voluntary communication of such number by the recipient directly to the sender, within the context of such established business relationship; or
 - (B) a directory, advertisement, or site on the Internet to which the recipient voluntarily agreed to make available its facsimile number for public distribution. If a sender obtains the facsimile number from the recipient's own directory, advertisement, or internet site, it will be presumed that the number was voluntarily made available for public distribution, unless such materials explicitly note that unsolicited advertisements are not accepted at the specified facsimile number. If a sender obtains the facsimile number from other sources, the sender must take reasonable steps to verify that the recipient agreed to make the number available for public distribution.
 - (C) This clause shall not apply in the case of an unsolicited advertisement that is sent based on an established business relationship with the recipient that was in existence before July 9, 2005 if the sender also possessed the facsimile machine number of the recipient before July 9, 2005. There shall be a rebuttable presumption that if a valid established business relationship was formed prior to July 9, 2005, the sender possessed the facsimile number prior to such date as well; and
- (iii) the advertisement contains a notice that informs the recipient of the ability and means to avoid future unsolicited advertisements. A notice contained in an advertisement complies with the requirements under this subparagraph only if –
- (A) the notice is clear and conspicuous and on the first page of the advertisement;
 - (B) the notice states that the recipient may make a request to the sender of the advertisement not to send any future advertisements to a telephone facsimile machine or machines and that failure to comply, within 30 days, with such a request meeting the requirements under subparagraph (v) is unlawful;
 - (C) the notice sets forth the requirements for an opt-out request under subparagraph (v);
 - (D) the notice includes—
 - (I) a domestic contact telephone number and facsimile machine number for the recipient to transmit such a request to the sender; and
 - (II) if neither the required telephone number or facsimile machine number is a toll-free number, a separate cost-free mechanism including a website address or email address, for a recipient to transmit a request pursuant to such notice to the sender of the advertisement. A local telephone number also shall constitute a cost-free mechanism so long as recipients are local and will not incur any long distance or other separate charges for calls made to such number; and
 - (E) the telephone and facsimile numbers and cost-free mechanism identified in the notice must permit an individual or business to make an opt-out request 24 hours a day, 7 days a week.
- (iv) A facsimile advertisement that is sent to a recipient that has provided prior express invitation or

permission to the sender must include an opt-out notice that complies with the requirements in subparagraph (iii).

- (v) A request not to send future unsolicited advertisements to a telephone facsimile machine complies with the requirements under this subparagraph only if –
- (A) the request identifies the telephone number or numbers of the telephone facsimile machine or machines to which the request relates;
 - (B) the request is made to the telephone number, facsimile number, website address or email address identified in the sender's facsimile advertisement; and
 - (C) the person making the request has not, subsequent to such request, provided express invitation or permission to the sender, in writing or otherwise, to send such advertisements to such person at such telephone facsimile machine.
- (vi) A sender that receives a request not to send future unsolicited advertisements that complies with subparagraph (v) must honor that request within the shortest reasonable time from the date of such request, not to exceed 30 days, and is prohibited from sending unsolicited advertisements to the recipient unless the recipient subsequently provides prior express invitation or permission to the sender. The recipient's opt-out request terminates the established business relationship exemption for purposes of sending future unsolicited advertisements. If such requests are recorded or maintained by a party other than the sender on whose behalf the unsolicited advertisement is sent, the sender will be liable for any failures to honor the opt-out request.
- (vii) A facsimile broadcaster will be liable for violations of paragraph (a)(3) of this section, including the inclusion of opt-out notices on unsolicited advertisements, if it demonstrates a high degree of involvement in, or actual notice of, the unlawful activity and fails to take steps to prevent such facsimile transmissions.

* * * * *

6. Section 64.1200(f) is revised to read as follows:

(f) * * *

(1) * * *

(2) The term clear and conspicuous for purposes of subparagraph (a)(3)(iii)(A) means a notice that would be apparent to the reasonable consumer, separate and distinguishable from the advertising copy or other disclosures, and placed at either the top or bottom of the facsimile.

(3) The term emergency purposes means calls made necessary in any situation affecting the health and safety of consumers.

(4) The term established business relationship for purposes of telephone solicitations means a prior or existing relationship formed by a voluntary two-way communication between a person or entity and a residential subscriber with or without an exchange of consideration, on the basis of the subscriber's purchase or transaction with the entity within the eighteen (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 three months immediately preceding the date of the call, which

relationship has not been previously terminated by either party.

(i) The subscriber's seller-specific do-not-call request, as set forth in paragraph (d)(3) of this section, terminates an established business relationship for purposes of telemarketing and telephone solicitation even if the subscriber continues to do business with the seller.

(ii) The subscriber's established business relationship with a particular business entity does not extend to affiliated entities unless the subscriber would reasonably expect them to be included given the nature and type of goods or services offered by the affiliate and the identity of the affiliate.

(5) The term established business relationship for purposes of paragraph (a)(3) on the sending of facsimile advertisements means a prior or existing relationship formed by a voluntary two-way communication between a person or entity and a business or residential subscriber with or without an exchange of consideration, on the basis of an inquiry, application, purchase or transaction by the business or residential subscriber regarding products or services offered by such person or entity, which relationship has not been previously terminated by either party.

(6) The term facsimile broadcaster means a person or entity that transmits messages to telephone facsimile machines on behalf of another person or entity for a fee.

(7) The term seller means the person or entity on whose behalf a telephone call or message is initiated for the purpose of encouraging the purchase or rental of, or investment in, property, goods, or services, which is transmitted to any person.

(8) The term sender for purposes of paragraph (a)(3) means the person or entity on whose behalf a facsimile unsolicited advertisement is sent or whose goods or services are advertised or promoted in the unsolicited advertisement.

(9) The term telemarketer means the person or entity that initiates a telephone call or message for the purpose of encouraging the purchase or rental of, or investment in, property, goods, or services, which is transmitted to any person.

(10) The term telemarketing means the initiation of a telephone call or message for the purpose of encouraging the purchase or rental of, or investment in, property, goods, or services, which is transmitted to any person.

(11) The term telephone facsimile machine means equipment which has the capacity to transcribe text or images, or both, from paper into an electronic signal and to transmit that signal over a regular telephone line, or to transcribe text or images (or both) from an electronic signal received over a regular telephone line onto paper.

(12) The term telephone solicitation means the initiation of a telephone call or message for the purpose of encouraging the purchase or rental of, or investment in, property, goods, or services, which is transmitted to any person, but such term does not include a call or message:

(i) To any person with that person's prior express invitation or permission;

(ii) To any person with whom the caller has an established business relationship; or

(iii) By or on behalf of a tax-exempt nonprofit organization.

(13) The term unsolicited advertisement means any material advertising the commercial availability or quality of any property, goods, or services which is transmitted to any person without that person's prior express invitation or permission, in writing or otherwise.

(14) The term personal relationship means any family member, friend, or acquaintance of the telemarketer making the call.

* * * * *

Appendix B

Final Regulatory Flexibility Analysis

68. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),¹⁹⁹ an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the Notice of Proposed Rulemaking and Order (*JFPA NPRM*).²⁰⁰ The Commission sought written public comment on the proposals in the *JFPA NPRM*, including comment on the IRFA. The only comment received on the IRFA was from the Office of Advocacy, U.S. Small Business Administration, and is discussed below. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.²⁰¹

A. Need for, and Objectives of, the Report and Order and Third Order on Reconsideration

69. This Report and Order and Third Order on Reconsideration (*Order*) is necessary to comply with Congress' mandate for the Commission to issue regulations implementing the Junk Fax Prevention Act of 2005.²⁰² In this *Order*, and as set forth in the statute, we (1) codify an established business relationship (EBR) exemption to the prohibition on sending unsolicited facsimile advertisements; (2) provide a definition of an EBR to be used in the context of unsolicited facsimile advertisements that is not limited in duration; (3) require the sender of a facsimile advertisement to provide specified notice and contact information on the facsimile that allows recipients to "opt-out" of any future facsimile transmissions from the sender; and (4) specify the circumstances under which a request to "opt-out" complies with the Act.

70. Specifically, in accordance with the Junk Fax Prevention Act, the *Order* permits the sending of facsimile advertisements to recipients with whom the sender has an EBR, provided certain conditions are met regarding how the facsimile number was obtained.²⁰³ In addition, the definition of EBR for purposes of sending facsimile advertisements extends the EBR exemption to faxes sent to both businesses and residential subscribers and is not limited in duration.²⁰⁴ Under the new rules, senders of facsimile advertisements must include a notice describing the procedures for opting out of future faxes that is clear and conspicuous and located on the first page of the advertisement.²⁰⁵ The rules require that an opt-out notice include a cost-free mechanism for the recipient to request not to receive future faxes. The cost-free mechanism must include a toll-free telephone number, toll-free facsimile number, website address, or email address. If the recipient makes a request not to receive future fax advertisements, the

¹⁹⁹ See 5 U.S.C. § 603. The RFA, see 5 U.S.C. §§ 601 – 612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

²⁰⁰ See *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991; Junk Fax Prevention Act of 2005*, CG Docket Nos. 02-278; 05-338, Notice of Proposed Rulemaking and Order, FCC 05-206, Appendix (rel. Dec. 9, 2005) (*JFPA NPRM*).

²⁰¹ See 5 U.S.C. § 604.

²⁰² See Junk Fax Prevention Act of 2005, Pub. L. No. 109-21, 119 Stat. 359 (2005) (Junk Fax Prevention Act).

²⁰³ See *Order, supra*, paras. 8-16.

²⁰⁴ See *id., supra*, paras. 18-23.

²⁰⁵ See *id., supra*, paras. 24-29.

sender must honor that request within the shortest reasonable time, not to exceed 30 days.²⁰⁶

71. In addition, the *Order* declines to exempt small businesses from the cost-free mechanism requirement, in part because the Commission is not requiring senders to provide toll-free telephone numbers for recipients to make opt-out requests.²⁰⁷ Finally, the *Order* does not carve out an exemption for tax-exempt nonprofit professional or trade associations from the opt-out notice requirement, noting that the benefits to consumers of having opt-out information readily available outweigh the burden in including such notices.²⁰⁸

72. Finally, the *Order* addresses certain issues raised in petitions for reconsideration of the 2003 TCPA *Order*²⁰⁹ concerning the TCPA's facsimile advertising rules. Specifically, the *Order* provides guidance to fax senders on what messages do not constitute unsolicited advertisements for purposes of the fax rules and therefore could be sent without the prior permission of the recipient. The *Order* clarifies that messages that do not promote a commercial product or service, including all messages involving political or religious discourse, such as a request for a donation to a political campaign, political action committee or charitable organization, are not unsolicited advertisements under the TCPA.²¹⁰ The *Order* also concludes that messages whose purpose is to facilitate, complete, or confirm a commercial transaction that the recipient has previously agreed to enter into with the sender are not advertisements. These might include a receipt or invoice, the primary purpose of which is to confirm the purchase of certain items by the facsimile recipient, an account statement, or communications sent to facilitate a loan transaction already entered into by the recipient.²¹¹ In addition, the *Order* determines that facsimile communications that contain only information, such as industry news articles, legislative updates, or employee benefit information, would not be prohibited by the TCPA rules.²¹² An incidental advertisement contained in such a facsimile does not convert the entire communication into an advertisement.

B. Summary of Significant Issues Raised by Public Comments in Response to the Supplemental IRFA

73. The only comment filed directly in response to the IRFA was from the Office of Advocacy of the U.S. Small Business Administration (Advocacy).

74. In its comments, Advocacy identified five proposed rules that would impact small businesses. First, Advocacy noted the Commission's proposal to limit the duration of the EBR as it

²⁰⁶ See *id.*, *supra*, paras. 30-32.

²⁰⁷ See *id.*, *supra*, para. 28, n.103.

²⁰⁸ See *id.*, *supra*, para. 41-42.

²⁰⁹ See *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02-278, Report and Order, 18 FCC Rcd 14014 (2003) (*2003 TCPA Order*).

²¹⁰ See *Order, supra*, para. 43.

²¹¹ See *id.*, *supra*, para. 49.

²¹² See *id.*, *supra*, para. 53.

applies to unsolicited fax advertisements.²¹³ Advocacy contends that, as required by the Junk Fax Prevention Act, the proposed rule does not include an analysis or determination that the EBR has resulted in a significant number of complaints.²¹⁴ Advocacy does not believe that the FCC has gathered the necessary information about complaints to limit the EBR. In addition, Advocacy contends that for small businesses to keep track of inquiries by customers would require a considerable increase in the amount of record-keeping and would impede the ability of small businesses to respond to such inquiries.²¹⁵

75. Second, the Commission asked whether it was necessary to set forth rules on what is to be considered "clear and conspicuous" for purposes of an opt-out notice on a fax advertisement.²¹⁶ Advocacy believes that the clear and conspicuous requirement should be held to a reasonable standard and that "any further attempts by the FCC to define the notice requirement would likely become mired in minutia and would likely cause more confusion than guidance."²¹⁷

76. Third, Advocacy believes that 30 days to comply with a do-not-fax request is reasonable.²¹⁸ Fourth, Advocacy recommends that the Commission exempt small businesses from the cost-free mechanism requirement in the Junk Fax Prevention Act.²¹⁹ Advocacy contends that many small businesses (particularly very small businesses) do not have toll-free numbers. If the Commission determines not to exempt small businesses, Advocacy recommends that the FCC allow them to use alternatives to toll-free numbers because of the "great expense associated with maintaining toll-free numbers."²²⁰ They state that small businesses recommend e-mail, web-based systems, or the designation of a third party as viable alternatives. Advocacy also says that small businesses believe that once a small business has chosen a means of receiving do-not-fax requests, then opt-out requests should only be enforceable if they are received in that manner.²²¹ Finally, Advocacy indicates that small businesses believe an exemption for tax-exempt nonprofit associations from the opt-out notice requirement would be appropriate.²²²

C. Description and Estimate of the Number of Small Entities To Which Rules Will Apply

77. The RFA directs agencies to provide a description of, and, where feasible, an estimate of,

²¹³ SBA Advocacy Comments at 6.

²¹⁴ *Id.*

²¹⁵ *Id.*

²¹⁶ *JFPA NPRM*, para. 20.

²¹⁷ SBA Advocacy Comments at 7.

²¹⁸ *Id.* at 7-8.

²¹⁹ *Id.* at 8-9.

²²⁰ *Id.*

²²¹ *Id.* at 9.

²²² *Id.*

the number of small entities that may be affected by the rules adopted herein.²²³ The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."²²⁴ In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.²²⁵ A "small business concern" is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).²²⁶

78. A small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field."²²⁷ Nationwide, as of 2002, there were approximately 1.6 million small organizations.²²⁸ The term "small governmental jurisdiction" is defined as "governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand."²²⁹ As of 1997, there were approximately 87,453 governmental jurisdictions in the United States.²³⁰ This number includes 39,044 county governments, municipalities, and townships, of which 37,546 (approximately 96.2%) have populations of fewer than 50,000, and of which 1,498 have populations of 50,000 or more. Thus, we estimate the number of small governmental jurisdictions overall to be 84,098 or fewer. Nationwide, there are a total of approximately 22.4 million small businesses, according to SBA data.²³¹

79. A more precise estimate of small businesses affected might be made. The IFRA stated that the Commission's rules on the sending of unsolicited facsimile advertisements would apply to any entity, including any telecommunications carrier, that uses the telephone facsimile machine to advertise.²³² Advocacy agreed, stating that "since what can be considered a commercial fax is so broad, it is appropriate for the FCC to consider that its rule could potentially impact almost all small businesses."²³³ Advocacy also noted that the U.S. Census Bureau updated its estimates based upon

²²³ 5 U.S.C. § 604(a)(3).

²²⁴ 5 U.S.C. § 601(6).

²²⁵ 5 U.S.C. § 601(3) (incorporating by reference the definition of "small-business concern" in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register."

²²⁶ 15 U.S.C. § 632.

²²⁷ 5 U.S.C. § 601(4).

²²⁸ Independent Sector, *The New Nonprofit Almanac & Desk Reference* (2002).

²²⁹ 5 U.S.C. § 601(5).

²³⁰ U.S. Census Bureau, *Statistical Abstract of the United States: 2000*, Section 9, pages 299-300, Tables 490 and 492.

²³¹ See SBA, *Programs and Services*, SBA Pamphlet No. CO-0028, at page 40 (July 2002).

²³² *JFPA NPRM*, para. 48. We also sought comment on the entities that must comply with the rules.

²³³ SBA Advocacy Comments at 5.

census information from 2002, which places the total number of small businesses in the United States (which it defines as firms with fewer than 500 employees) at 5.68 million.²³⁴ Advocacy explains that ordinarily the SBA defines small business on an industry-by-industry basis. However, Advocacy contends that this is not practicable for the proposed rules because of its “broad applicability across industry lines which would create confusion on the part of small businesses” as to whether or not they are covered by the rules. Accordingly, Advocacy recommends the Commission consider adopting a new small business size standard for this rule.²³⁵ Drawing from the input from small business groups, Advocacy recommends that the FCC adopt a size standard of 100 employees for this rulemaking. Based on the U.S. Census 2002 numbers, Advocacy indicates that 5.6 million firms would then qualify as small businesses.²³⁶ Given that we are not exempting small businesses from the requirement to identify a cost-free mechanism for fax recipients to opt-out of future unwanted faxes, we conclude it is not necessary at this time to adopt a new small business size standard for this rule. Therefore, we estimate that, consistent with Advocacy’s comments, the rules apply to 5.68 million small entities across all industries in the United States.

D. Description of Projected Reporting, Record Keeping, and Other Compliance Requirements

80. The *Order* will likely result in increases in projected reporting, record keeping, and other compliance requirements for senders of facsimile advertisements. The statutory and rule changes affect both small and large companies. First, in accordance with the Junk Fax Prevention Act, the *Order* adopts an EBR exemption for sending fax advertisements. Should a question arise as to the validity of an EBR, the burden will be on the sender to show that it has a valid EBR with the recipient. However, the Commission emphasized that there is no requirement that senders of fax advertisements maintain any specific records demonstrating that an EBR exists. We believe the EBR can be demonstrated with records kept in the usual course of business, such as purchase agreements, sales slips, applications and inquiry records.²³⁷

81. In accordance with the Junk Fax Prevention Act, the Commission concluded that an EBR alone does not entitle a sender to fax an advertisement to an individual consumer or business. The sender must also ensure that the telephone facsimile number was provided voluntarily by the recipient. We find that it would be permissible for the sender to fax an advertisement to a recipient that had provided a facsimile number directly to the sender, for example, on an application, information request, contact information form, or membership renewal form.²³⁸ In the event a recipient complains that its facsimile number was not provided to the sender, the burden rests with the sender to demonstrate, with such business records, that the number was communicated in the context of the EBR. Similarly, if the facsimile number was obtained from the recipient’s *own* directory, advertisement, or internet site, the Commission determined that it was voluntarily made available for public distribution, unless the recipient has noted on such materials that it does not accept unsolicited advertisements at the facsimile

²³⁴ *Id.* at 4 (citing U.S. Census Bureau, *Statistics of U.S. Businesses, Tabulations by Enterprise Size 2002* <<http://www.census.gov/csd/susb/usalli02.xls>>).

²³⁵ SBA Advocacy Comments at 4.

²³⁶ *Id.* at 5.

²³⁷ See *Order, supra*, para. 12.

²³⁸ See *id., supra*, para. 14.

number in question. In such circumstances, the facsimile recipient's own advertisement would serve as evidence of the recipient's agreement to make the number available for public distribution.²³⁹ If the sender obtains the number from sources of information compiled by third parties, the sender must take reasonable steps to verify that the recipient consented to have the number listed, such as calling or emailing the recipient. While the Commission is not requiring that any specific records be kept, should a question arise about how the facsimile number was obtained, the sender would need to demonstrate that it was voluntarily provided.²⁴⁰ It is up to senders to determine the best way to do so if that becomes necessary.

82. The Junk Fax Prevention Act requires facsimile senders to include a notice on the first page of the unsolicited advertisement that instructs the recipient how to request that they not receive future unsolicited facsimile advertisements from the sender. In the *Order*, we require that all unsolicited facsimile advertisements contain a notice on the first page of the advertisement stating that the recipient is entitled to request that the sender not send any future unsolicited advertisements.²⁴¹ The notice must be separate from the advertising copy or other disclosures and placed at either the top or bottom of the fax. The notice also must include a domestic contact telephone number and a facsimile machine number, and at least one cost-free mechanism for transmitting an opt-out request. In the *Order*, the Commission concluded that a website address, email address, toll-free telephone number, or toll-free facsimile machine number will constitute "cost-free mechanisms" for purposes of the rules. For those facsimile senders that do not already have one of these mechanisms in place, they will need to implement one in order to give recipients a cost-free way of opting-out of faxes. In accordance with the statute, the mechanism must accept opt-out requests 24 hours a day, 7 days a week at the mechanisms identified in the notice.²⁴² The rules also require that highly involved fax broadcasters must ensure that the faxes it transmits on behalf of each sender contain the necessary information to allow a consumer to opt-out of a particular sender's faxes in the future.²⁴³

83. The new rules require that a facsimile sender that receives a request not to send future unsolicited advertisements that complies with the rules must honor that request within the shortest reasonable time from the date of such request, not to exceed 30 days from the date of such request and is prohibited from sending unsolicited advertisements to the recipient unless the recipient subsequently provides prior express invitation or permission to the sender.²⁴⁴ Facsimile senders will need to take steps to remove such facsimile numbers from their faxing databases, or maintain do-not-fax lists to avoid sending advertisements to recipients that have opted out, within the shortest reasonable time, not to exceed 30 days. If a recipient subsequently provides the sender with his express permission to send advertisements, whether orally or in writing, the burden of proof rests with the sender to demonstrate that permission was given. Thus, we suggest that senders take steps to promptly document that they received such permission by, for instance, recording the oral authorization, or using established business practices

²³⁹ See *id.*, *supra*, para. 15.

²⁴⁰ See *id.*

²⁴¹ See *id.*, *supra*, para. 24.

²⁴² See *id.*, *supra*, para. 29.

²⁴³ See *Order*, *supra*, para. 38.

²⁴⁴ See *Order*, *supra*, paras. 30-31.

or contact forms.²⁴⁵

E. Steps Taken to Minimize Significant Economic Impact on Small Entities and Significant Alternatives Considered

84. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.²⁴⁶

85. In this *Order*, we adopt rules in accordance with the provisions in the Junk Fax Prevention Act. In doing so, we consider a number of alternatives to minimize the economic impact on small entities that must comply with the rules. In this *Order*, the Commission adopts an EBR exemption to the prohibition on sending unsolicited facsimile advertisements. The exemption will permit all entities, including small businesses, to send fax advertisements to their EBR customers without having to secure written permission from them first. In addition, the Commission was authorized by Congress to consider limiting the duration of the EBR. In the *Order*, the Commission determined not to limit the EBR and alternatively indicated it would closely monitor implementation of the new EBR exemption and opt-out policies adopted in the *Order*.²⁴⁷ As part of its review, the Commission will evaluate the Commission's complaint data to determine whether the EBR exception has resulted in a significant number of complaints regarding facsimile advertisements and whether such complaints involve fax advertisements sent based on an EBR of a duration that is inconsistent with the reasonable expectations of consumers.²⁴⁸

86. In addition, the Junk Fax Prevention Act requires facsimile senders to include a clear and conspicuous notice on the first page of the unsolicited advertisement that instructs the recipient how to opt-out of future unwanted faxes. As discussed in the *Order*, the Commission considered defining clear and conspicuous to mean a notice that is on the first page of the advertisement and apparent to a reasonable consumer.²⁴⁹ Alternatively, we considered providing additional guidance to ensure that consumers are aware of their opt-out rights and sending parties have standards by which they can comply with the law.²⁵⁰ In the *Order*, the Commission determined that "clear and conspicuous" for purposes of the opt-out notice means a notice that would be apparent to a reasonable consumer and located on the first page of the fax advertisement. We further clarified that the notice must be separate from the

²⁴⁵ See *Order, supra*, para. 46.

²⁴⁶ 5 U.S.C. § 603(c).

²⁴⁷ See *Order, supra*, paras. 21-23.

²⁴⁸ See *id., supra*, para. 23.

²⁴⁹ See *id.*, para. 25.

²⁵⁰ *Id.*

advertising copy or other disclosures and placed at either the top or bottom of the fax.²⁵¹ However, we declined to adopt rules specifying the font type, size and wording of the notice.

87. The statute also requires that senders identify in their notices a cost-free mechanism for recipients to transmit opt-out requests to the senders. Rather than require senders to provide a toll-free telephone number for consumers to request that no future faxes be sent, the Commission chose an alternative approach that permits senders to use a website address, email address, toll-free telephone number, or toll-free facsimile number.²⁵² Allowing senders to use websites and email addresses should minimize any burdens on them, particularly small businesses for whom setting up a toll-free number might be costly. The Commission also determined that recipients must use the opt-out mechanisms identified by the senders in their notices so that such businesses, including small businesses, can more easily account for all opt-out requests and process them in a timely manner.²⁵³

88. In the *JFPA NPRM*, the Commission sought comment on whether to exempt small businesses from the requirement to provide a cost-free mechanism for a recipient to transmit an opt-out request.²⁵⁴ As noted above, the Commission declined to require fax senders to offer a toll-free number for recipients to request that no future faxes be sent. Given that we are not mandating the use of toll-free numbers, as well as the support in the record for using websites and email addresses by small businesses, the Commission determined not to exempt small businesses from the cost-free mechanism requirement.²⁵⁵ The Commission found that the record contained little empirical evidence that the costs associated with setting up a website or email address would be unduly burdensome to a small business given its revenues.²⁵⁶

89. The Commission also considered the burdens to businesses of having to comply with opt-out requests in the "shortest reasonable time." The record revealed that some commenters support a period of 30 days within which senders must comply with opt-out requests. Other commenters support a shorter period of time for honoring do-not-fax requests, such as 10 or 15 days.²⁵⁷ In the *Order*, the Commission determined to require senders to honor requests within the shortest reasonable time from the date of such request, not to exceed 30 days.²⁵⁸ We believe this will permit both senders with large databases of facsimile numbers, as well as small businesses with limited resources, to remove numbers for individuals that opt-out of faxes.

90. Finally, the *Order* removes the Commission's rule at section 64.1200(a)(3)(i) which requires the sender to obtain a signed, written statement indicating the recipient's consent to receive

²⁵¹ See *id.*, para. 26.

²⁵² See *id.*, paras. 27-28.

²⁵³ See *id.*, para. 34.

²⁵⁴ *JFPA*, para. 22.

²⁵⁵ See *Order, supra*, para. 27-28.

²⁵⁶ *Id.*

²⁵⁷ See *id.*, para. 30.

²⁵⁸ See *id.*, para. 31.

facsimile advertisements.²⁵⁹ *The Commission determined instead that prior express invitation or permission to send an advertisement may be given by oral or written means, including electronic methods. We noted that written permission could take many forms, including email, facsimile, and internet form. We believe this determination will permit small entities to obtain permission more easily from consumers who make inquiries, file applications, or request information.*

F. Report to Congress

91. The Commission will send a copy of the *Order*, including this FRFA, in a report to be sent to Congress and the Government Accountability Office pursuant to the SBREFA.²⁶⁰ In addition, the Commission will send a copy of the *Order*, including the FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the *Order* and the FRFA (or summaries thereof) will also be published in the Federal Register.²⁶¹

²⁵⁹ *See id.*, para. 11, n.38.

²⁶⁰ *See* 5 U.S.C. § 801(a)(1)(A).

²⁶¹ *See* 5 U.S.C. § 604(b).

Appendix C

Comments Filed

American Society of Travel Agents, Inc.	ASTA
American Society of Association Executives	ASAE
American Bar Association	ABA
American Financial Services Association	AFSA
America's Community Bankers	ACB
American Road & Transportation Builders	ARTBA
American Teleservices Association	ATA
ACA International	ACA
American Business Media	ABM
Attorneys General of Arkansas, Connecticut, Kentucky, and New Mexico	AGs
American Bankers Association	American Bankers Assoc
American Health Care Association	Am Health
American Hotel and Lodging Association	AHLA
Bank of America	Bank of America
B. Sachau	Sachau
Credit Union National Association	CUNA
Comerica Incorporated	Comerica
Coastal Training Technologies Corporation	CTTC
Consumer Bankers Association	CBA
Countrywide Home Loans	Countrywide
Direct Marketing Association	DMA
Electronic Privacy Information Center	EPIC
Douglas M. McKenna	McKenna
Everett Laboratories, Inc.	Everett Labs
Empire Corporate Federal Credit Union	Empire
Harold Hallikainen	Hallikainen
Huntington National Bank	Huntington Natl Bank
Housing Policy Council	HPC
International Foodservice Distributors Associations	IFDA
Independent Sector	IS
Jimmy Sutton	Sutton
Joint Comments of Direct Marketing Association, American Association of Advertising Agencies, Association of National Advertisers, Inc. and Magazine Publishers	Joint Associations
Joint Comments of Named State Broadcasters Association	State Broadcasters
Lorman Education Services	Lorman Ed Services
Michael Worsham	Worsham
Mortgage Finance Coalition	MFC
National Multi Housing Council	NMHC
National Association of Realtors	NAR
National Federation of Independent Businesses	NFIB
National Newspaper Association and Newspaper Association of America	NAA
National Association of Wholesaler-Distributors	NAWD

Newsletter & Electronic Publishers Association	NEPA
North American Equipment Dealers Association	NAEDA
National Independent Automobile Dealers Association	NIADA
Office of Advocacy, US Small Business Administration	SBA Advocacy
Privacy Rights Clearinghouse	PRC
Reed Elsevier, Inc.	Reed Elsevier
Robert Biggerstaff	Biggerstaff
Securities Industry Association	SIA
Society for Human Resource Management	SHRM
Sprint/Nextel	Sprint
Staples, Inc.	Staples
Texas Office of Public Utility Counsel	Texas OPC
Verizon	Verizon
Wayne G. Strang	Strang
Westfax, Inc.	Westfax
Yellow Pages Association	YPA

Reply Comments Filed

Robert Biggerstaff	Biggerstaff
CBS Corporation	CBS
Direct Marketing Association	DMA
Fax Ban Coalition	Fax Ban Coalition
Lorman Education Services	Lorman Ed Services
Douglas M. McKenna	McKenna
National Association of Realtors	NAR
National Association of Broadcasters	NAB
Wayne G. Strang	Strang
Texas Office of Public Utility Counsel	Texas OPC

Petitions For Reconsideration of 2003 Report and Order Filed

Air Conditioning Contractors of America (8/12/03)	Air Conditioning Contractors
American Association of Advertising Agencies, Association of National Advertisers, and National Association of Broadcasters (filed as AAAA/ANA/NAB) (8/25/03)	Advertising Agencies
American Business Media (8/25/03)	American Business Media
American Dietetic Association (8/6/03) (8/25/03)	Dietetic Association
American Society of Association Executives (7/25/03) (8/20/03)	ASAE
American Tire Distributors, Inc. (8/25/03)	American Tire
Association of Small Business Development Centers (filed as Donald Wilson) (8/11/03)	ASBDC
Biggerstaff, Robert (8/22/03)	Biggerstaff
Brautigam, Jr., Lawrence C. (8/25/03)	Brautigam
Brown, Dennis C. (8/18/03)	Brown
California Association of Realtors (8/25/03)	California Realtors

Chamber of Commerce of the United States, Associated General Contractors of America, Community Associations Institute, Credit Union National Association, National Association of Manufacturers, National Association of Wholesaler- Distributors, National Grocers Association, National Restaurant Association, and National Federation of Independent Business (filed as The Chamber of Commerce of the United States, et al.) (8/25/03)	Chamber of Commerce
Coalition for Healthcare Communication (8/25/03)	Coalition for Healthcare
Consumer Bankers Association (8/26/03 – LATE FILED)	Consumer Bankers
Consumer Electronics Association (8/21/03)	Consumer Electronics
Copia International, Ltd. (filed as Steve Hersee) (8/25/03)	Copia
Direct Marketing Association (8/25/03)	DMA
FaxDaily (filed as John Mayhill) (8/12/03)	FaxDaily
Faxts, Inc. (filed as Edwin Solot) (8/22/03)	Faxts
Financial Services Coalition (8/25/03)	Financial Services Coalition
Independent Insurance Agents and Brokers of America (8/25/03)	Independent Insurance Agents
Independent Sector (filed as Patricia Read) (8/25/03)	Independent Sector
Jobson Publishing LLC (8/25/03)	Jobson
Maryland Association of Nonprofit Organizations (filed as Henry W. Bogdan) (8/25/03)	Maryland Nonprofit
National Association of Business Political Action Committees (8/25/03)	Business PACs
National Association of Chain Drug Stores (8/25/03)	Chain Drug Stores
National Association of Realtors (8/25/03)	NAR
National Retail Federation (8/4/03) (refiled 9/17/03)	National Retail
Newsletter & Electronic Publishers Association (8/15/03)	Newsletter & Electronic Publishers
Newspaper Association of America and the National Newspaper Association (filed as Newspaper Association of America) (8/22/03)	Newspaper Association
Nextel Communications, Inc. (filed as Nextel Communicaitons, Inc.) (8/25/03)	Nextel
Office of Advocacy, U.S. Small Business Administration (8/25/03)	Office of Advocacy
Presidential Classroom for Young Americans Inc. (8/20/03)	Presidential Classroom
Produce Marketing Association (8/18/03)	Produce Marketing
Proximity Marketing (8/6/03) (8/25/03)	Proximity Marketing
Reed Elsevier Inc. (8/25/03)	Reed Elsevier
Scholastic Inc. (8/21/03)	Scholastic
Travel Industry Group (8/25/03)	Travel Industry Group
Wells Fargo & Company (8/25/03)	Wells Fargo
Yellow Pages Integrated Media Association (8/25/03)	Yellow Pages

Oppositions to Petitions for Reconsideration Filed

National Association of State Utility Consumer Advocates (10/14/03) (filed as NASUCA)	NASUCA
Oney, Walter (9/23/03)	Oney
Strang, Wayne G. (10/20/03)	Strang
Yellow Pages Integrated Media Association (10/14/03)	Yellow Pages
YP.Net (10/14/03)	YP.Net

Replies to Oppositions Filed

America's Community Bankers (11/3/03) (filed as America Community Bankers)	Community Bankers
Biggerstaff, Robert (10/31/03)	Biggerstaff
National Association of Wholesaler-Distributors (11/5/03)	Wholesaler-Distributors
National Federation of Independent Business (11/3/03)	NFIB
Office of Advocacy, U.S. Small Business Administration (10/30/03)	Office of Advocacy