

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

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

To: The Commission

**NATIONAL ASSOCIATION OF BROADCASTERS
COMMENTS IN SUPPORT OF PETITION FOR RECONSIDERATION**

I. Introduction.

The National Association of Broadcasters (“NAB”)¹ hereby files these comments in support of the Petition for Reconsideration filed by Leventhal Senter & Lerman PLLC on behalf of many broadcast clients (“Petitioners”).² Petitioners request that the Commission revisit its recent *Report and Order*³ governing fax advertising opt-out procedures and mechanisms pursuant to the Junk Fax Prevention Act of 2005.⁴ In the *Report and Order*, the Commission

¹ NAB is a nonprofit trade association that advocates on behalf of more than 8,300 free, local radio and television stations and also broadcast networks before Congress, the Federal Communications Commission and the Courts.

² See In the Matter of Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, *Petition for Reconsideration or Clarification*, CG Docket Nos. 02-278, 05-338 (June 2, 2006) (“*Petition*”).

³ In the Matter of Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, Junk Fax Prevention Act of 2005, *Report and Order and Third Order on Reconsideration*, CG Docket Nos. 02-278, 05-338 (April 5, 2006) (“*Report and Order*”).

⁴ Junk Fax Prevention Act of 2005, Pub. L. No. 109-21 (2005).

implemented fax advertising opt-out procedures and mechanisms that could adversely affect consumers and broadcasters.⁵ Broadcasters provide free, over-the-air, locally based radio and television to consumers in their local territories. Commercial broadcast service is advertiser-supported, and in the ordinary course of this business, broadcasters rely on fax transmissions to help communicate quickly, clearly, and effectively regarding industry issues and services.⁶

As discussed below, NAB agrees with Petitioners that (1) the Commission should amend its rules to state that a clear and conspicuous description of a sender's opt-out mechanism on the webpage to which recipients of unsolicited faxed advertisements are directed, complies with the requirement that such a description appear on a website's first page; and (2) to allow the cover page to be considered the first page of the fax for purposes of the opt-out notification.⁷

II. The Commission Should Reconsider the Opt-Out Procedure and Mechanism on Web Homepages.

NAB agrees with Petitioners that the Commission's rules regarding opt-out requirements are unduly burdensome.⁸ Currently, the Commission's requires that a description of the opt-out mechanism be included *on the first page* of the faxing entity's website.⁹ The homepages of websites for most businesses and associations do not easily lend themselves to including a lengthy, "clear and conspicuous" description of the opt-out mechanism.¹⁰ As Petitioners point

⁵ See *Report and Order* at ¶ 28.

⁶ See In the Matter of Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, *Joint Comments of the Named State Broadcasters Associations*, CG Docket Nos. 02-278, 05-338 (Jan. 18, 2005).

⁷ See *Petition* at 1-2.

⁸ *Id.* at 2.

⁹ See *Report and Order* at ¶ 28.

¹⁰ *Id.*

out, homepages are primarily used for navigational, editorial, informational links, and links to other legal content.¹¹ Changing the content of their homepage to include a full opt-out notice description interferes with critical graphical content. This would be much more cost prohibitive than simply designing a separate opt-out page linked from the homepage.¹² Reconfiguring web homepages is particularly burdensome for small and medium sized broadcasters.

Thus, NAB agrees with Petitioners that a better way to meet the opt-out requirement is to include the requisite description on a dedicated opt-out page highlighted by URL in the opt-out notice.¹³ For example, the homepage could include a clearly marked link to a single dedicated web page providing opt-out procedures. The specific link for this web page could also easily be included in the opt-out notice included on the fax itself, as discussed below. This approach is more user-friendly because consumers would be able to locate the procedure more easily from a specific link than sifting through the entire homepage. Thus, making this change to the requirement would both serve the Commission's goals of protecting consumers and is less burdensome to businesses and associations that rely on the content of their homepages to give valuable information to visitors.

III. The Commission Should Require Opt-Out Notice on Fax Cover Page Only.

NAB also agrees with Petitioners that allowing the required opt-out notice to be included on the cover page of the fax advertisements is both logical and consistent with the Commission's

¹¹ *Petition* at 2.

¹² *Id.* at 4.

¹³ *Id.* at 2; *See also* In the Matter of Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, *Reply Comments of CBS Corporation*, CG Docket No. 02-278, 05-338 (Feb. 2, 2006) at 7.

first page requirement to ensure that the notice is clear and conspicuous to the consumer.¹⁴ NAB respectfully urges the Commission to clarify that where the opt-out notice must appear “on the first page of the unsolicited advertisement,” such first page is the first page that is *transmitted*.¹⁵ If a cover sheet accompanies the fax, the opt-out notice should appear on the cover sheet and if no such cover sheet is used, the opt-out notice should appear on the first page of the document that is transmitted.¹⁶ Although one footnote in the *Report and Order* suggest that in addition to putting the opt-out notice on the first page of the fax, it would also be useful for consumers to have it on the cover page,¹⁷ such a requirement is unnecessary and is likely to burden both consumers and businesses. Not allowing the cover page of the fax to operate as the first page for these purposes inadvertently hurts consumers more than it helps them because it requires them to bear the cost of additional fax pages. From a practical standpoint, the first page of a fax is the cover page and thus allowing an opt-out notice on this page to be sufficient is the most prudent method to further the Commission’s goal of providing upfront opt-out notifications. Thus, NAB urges the Commission to clarify its decision.

¹⁴ *Petition* at 4-5.

¹⁵ See In the Matter of Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, *Reply Comments of CBS Corp.*, CG Docket Nos. 02-278, 05-338 (Feb. 2, 2006) at 7; In the Matter of Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, *Comments of Bank of America*, CG Docket Nos. 02-278, 05-338 (Jan. 18, 2006) at 3-4; In the Matter of Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, *Comments of Huntington National Bank*, CG Docket Nos. 02-278, 05-338 (Jan. 18, 2005) at 4-5.

¹⁶ See, e.g., In the Matter of Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, *Reply Comments of CBS Corp.*, CG Docket Nos. 02-278, 05-338 (Feb. 2, 2006) at 7.

¹⁷ See *Report and Order* at ¶ 26, fn.96.

Moreover, a fax cover sheet is the first page a recipient will see and generally contains important information about the fax including the contact information of the sender and the recipient, and the purpose of the fax. As Petitioners correctly state, like general contact information, an opt-out notice speaks to the relationship between the sender and recipient, and is, therefore, more appropriately placed on the cover page rather than in the substantive portion of the fax.¹⁸ Many senders, including non-profit organizations, send advertisements by fax that are pre-produced and cannot easily be edited due to copyright, trademark, or artistic reasons.¹⁹ Thus, they cannot, in many circumstances, include any additional content in an advertisement, including the opt-out notice.

Further, state-by-state opt-out notice requirements differ. For example, Colorado requires the notice to be in the margin at the top or bottom of each transmitted page or on the first page of the transmission, while New Jersey requires the notice to be on the first page of the unsolicited advertisement.²⁰ Such differences make implementation and compliance with the law difficult and burdensome. NAB thus agrees with Petitioners' conclusion that the Commission's recognition of the cover page as the first page of the fax would help establish a universal standard that will alleviate those burdens, while simultaneously protecting consumers from future unwanted faxes.²¹

¹⁸ *See Petition* at 5.

¹⁹ *Id.*

²⁰ Colo. Rev. State §§ 6-1-702 (a)(b); N.J. Stat. Ann. § 56:8-158 (2)(b).

²¹ *See Report and Order* at ¶ 26.

IV. Conclusion.

For the reasons stated above, NAB urges the Commission to reconsider its previous rulings to (1) accept a specified URL link for online opt-out notices and (2) to allow the cover page be considered to be the first page of the fax for purposes of the opt-out notification. These modest revisions will facilitate the Commission's goals of a clear and conspicuous opt-out notification, and will alleviate unforeseen burdens placed on businesses, associations, and non-profit organizations.

Respectfully submitted,

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