

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

In the Matter of

Rules and Regulations Implementing
the Telephone Consumer Protection
Act of 1991

Junk Fax Prevention Act of 2005

CG Docket No. 02-278

CC Docket No. 05-338

**Richard S. Alembik's Comments Replying to
the Comments of Steve Nocerini and Other Consumers**

I write to agree with and expound upon the comments filed by Steve Nocerini and other consumers in this matter.

The TCPA applies to faxes sent to servers and other computers. It has always applied to faxes sent to them. There is no reason for the Commission to change its long-standing interpretation of the law. The Commission should deny Westfax's petition.

I have had an e-fax service provider for years with a fax number that was assigned to me, for my use. A junk fax sent to that number uses and depletes resources that I pay for. The prohibition on sending junk faxes is about more than just preventing the theft of paper and toner. Junk faxes interfere with commerce, something Congress expressly acknowledged when it passed the TCPA. Junk faxes block legitimate faxes. When junk faxes are converted to e-

mail attachments and sent to me, they take up space in my e-mail inbox. Thus, not only does it consume the e-fax resources that I pay for, but they also consume resources that I pay my Internet service provider for. They also intrude on my attention in a far more insidious way than even paper faxes do. And because I access my e-mail on a smartphone and tablet, junk faxes in my e-mail eat up my data plan. If I go over my quota of incoming fax pages with my e-fax service, I am charged additional fees just to receive junk faxes. And if those junk faxes have depleted my data plan, I get charged again for reading them on my smartphone and tablet computer.

I am the “recipient” of all faxes sent to my e-fax number. The service provider operates the equipment and resources involved in receiving those faxes. But I pay for those resources. This is no different than someone who leases a fax machine from an office-equipment provider. Neither the equipment-leasing company or the e-fax service is the “recipient” of faxes that pass through their equipment to their subscribers.

After my e-fax service provider processes the fax on my behalf and delivers it to me in an e-mail, the e-mail is not a fax transmission. Imagine that someone in my office takes a received fax off the fax machine and puts it in an envelope and mails it to me. That would not make the envelope a fax subject to the TCPA. But it doesn’t change the fact that the first leg of the transmission’s journey was indeed a fax transmission. What happens after

that fax transmission is received is a separate act. That separate act might be an e-mail or a letter or some other form of communication. But that subsequent transmission does not alter the nature of the first, which undisputably would be a fax transmission. If the law is to have any effect, the TCPA must apply to every fax transmission.

If the fax number a fax is sent to is my fax number, then I am the recipient of the fax under the TCPA regardless of whether the company I subscribe that number from is the phone company, an e-fax service, or anyone else.

If the person indicated in the header of a fax is deemed the “recipient” of the junk fax regardless to whom the junk fax was actually sent, then a flood of junk faxes would result. If the person indicated in the header of a fax is deemed the “recipient” of the junk fax regardless to whom the junk fax was actually sent, then junk faxers will simply put incorrect information in the header to avoid liability just like robocallers engage in caller-ID spoofing.

Allowing fax broadcasters to advise their clients on how to comply with the TCPA would violate the law of most, if not all, states. Giving legal advice is something only lawyers can do. It is at best dubious that the FCC has the authority to regulate—or, as the case may be here, deregulate—the practice of law in the states. The FCC has no business regulating the practice of law, which is what it appears the commission is being asked to do by Westfax.

iHire appears to be a company that sends junk faxes. Like many junk faxers, any loophole they can squeeze through will result in an explosion of junk faxes. I do not want unsolicited faxes of résumés any more than I want unsolicited faxes for vacation packages or diet pills. They are all advertisements. Companies like iHire look for businesses that may be hiring and then send them redacted résumés or résumés with advertisements added to them. You must then go through iHire if you are interested in contacting the person. These junk faxes are part of a commercial enterprise in which companies are looking to make a sale and they are no different than junk faxes touting vacation packages and health insurance. They are cost-shifted advertisements and steal recipients' resources just the same.

If an employer invites résumés to be sent to it by fax, they are inviting résumés to be sent to them and only résumés—real ones from individuals, not teasers from headhunters or résumé aggregators looking to make a sale. Nor should faxed résumés, including unredacted ones, have advertisements appended to them by services like iHire. If any service provider like iHire is adding advertisements to a résumé and they send it to me by fax after I have invited résumés to be sent to me by fax, they are not complying with my invitation. I asked for résumés, not résumés and advertisements. An uninvited guest that tags along with an invited guest to a wedding is still a wedding crasher. And an advertisement attached to a résumé is a junk fax.

I receive too many junk faxes now. I don't want the FCC to change its interpretation of the law to make it so that I will receive more.

Respectfully submitted this 28th day of November 2012.

s/ Richard S. Alembik
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