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**Before the
Federal Communications Commission
Washington DC 20544**

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| In the matter of WestFax, Inc.'s Petition for Consideration and Clarification | CG Docket No. 02-278 Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991 DA 12-1704 October 23, 2012 |
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Gerald Roylance's Reply re WestFax, Inc.'s Petition

In DA 12-1704,¹ the FCC seeks comment about WestFax, Inc.'s September 24, 2009 petition.² Generally, iHire's petition seeks clarification about services that convert fax communications to email messages. The petition poses a few questions starting at page 4.

There seems to be little support for this petition. The service appears to be just like sending ordinary faxes. The petitioner's goal is to escape liability because technology has advanced to the point where a piece of paper is often an abstraction on an LCD screen. A fax blaster need not scan a real piece of paper. Today, some graphics arts program is used to design a virtual page that the artist may never print on a piece of paper. Instead, some computer file description of the page is given to the fax blaster. Instead of printing the page and actually scanning that page, a program processes the file, virtually prints the file in memory, and then virtually scans the file into a CCITT fax

¹ FCC, <http://apps.fcc.gov/ecfs/document/view?id=7022037253>, "Consumer and Governmental Affairs Bureau Seeks Comment on Petition for Consideration and Clarification from WestFax, Inc."

² WestFax, Inc., "WestFax, Inc. Petition for Consideration and Clarification", September 24, 2009, <http://apps.fcc.gov/ecfs/document/view?id=7022037254> and <http://apps.fcc.gov/ecfs/document/view?id=7022037255>

format. The blaster dials numbers and sends out the information as if paper had been scanned. Similarly, the recipient may handle the transmitted image as a virtual piece of paper that never gets printed. The effect is the same, and the process should carry the same restrictions.

Richard Alembik's comments³ show that even virtual printing can have costs. Alembik, a long time efax subscriber, reads his email on his cellular telephone, so he pays for "printing" by hits to his data plan. That's not to say the fax violation has turned into a cellular telephone violation; it has not. But Alembik is paying for his efax service (we don't know if he's charged per fax), and efares are being treated the same as faxes that were printed on paper and physically scanned before being sent.

I'm writing this reply on a computer screen. I won't be printing it out. I have not printed out the comments of others. Instead, they are in a browser window as a collection of tabs. The world is moving away from wood pulp; it is saving trees. That movement should not give WestFax any special privilege for junk faxing.

Steve Nocerini comments⁴ show him to be a long time efax user. The junk faxes he receives are disruptive. Nocerini clearly distinguishes between the fax transmission to his efax number and the subsequent email: "The e-mail does not affect the original fax transmission to my e-fax number. The TCPA applies to the fax transmission to my e-fax number, not the separate act of the e-mail from e-fax."

Michael Worsham's comments⁵ do not paint a pretty picture of WestFax. WestFax appears to be a serial TCPA violator. Presumably, WestFax would have raised the fax broadcaster defense in those cases, so the courts would have found that WestFax had a high degree of involvement in the faxing. Consequently, the current petition smacks of forum shopping.

As I pointed out in my comments,⁶ WestFax's website wants clients to use its services, so it makes little effort to warn those clients about the TCPA. The actual warnings are buried in a long contract. While literally true, the statements can easily be misread, and a statement about receiving faxes without an opt-out seems to be a misdirection. WestFax is a spider, and it is inviting flies. It is not unreasonable that WestFax be deemed to have a high degree of involvement.

Robert Braver's comments⁷ show he is an efax subscriber; the comments also address liability. TCPA warnings should not just be in the contract but also prominent.

The petition should be denied. If the FCC does anything, it should lower the bar for a high degree of involvement.

³ <http://apps.fcc.gov/ecfs/document/view?id=7022067871>

⁴ <http://apps.fcc.gov/ecfs/document/view?id=7022065300>

⁵ <http://apps.fcc.gov/ecfs/document/view?id=7022064521>

⁶ <http://apps.fcc.gov/ecfs/document/view?id=7022063715>

⁷ <http://apps.fcc.gov/ecfs/document/view?id=7022064422>