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May 17, 2013

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

Re: Notification of Ex Parte Presentations of Anda, Inc., Regarding Petition for Declaratory Ruling to Clarify That 47 U.S.C. § 227(b) Was Not the Statutory Basis for Commission's Rule Requiring an Opt-Out Notice for Fax Advertisements Sent with Recipient's Prior Express Consent, CG Docket No. 05-338 (filed Nov. 30, 2010)

Dear Ms. Dortch:

On May 15, 2013, the undersigned and Matthew Murchison, both of Latham & Watkins LLP, along with Ashlie Van Meter and James Fenton of Actavis, Inc., the parent company of Anda, Inc. ("Anda"), met with Rebekah Goodheart, legal advisor to Commissioner Mignon Clyburn, in connection with Anda's Petition for Declaratory Ruling and Application for Review in the above-mentioned docket.

At this meeting, we discussed the uncertain legal basis for Section 64.1200(a)(3)(iv) of the Commission's rules, which provides that commercial faxes sent with the prior express consent of the recipient must contain the same opt-out notice that appears on unsolicited fax advertisements.¹ We noted that Anda had filed a Petition for Declaratory Ruling in November 2010 asking the Commission to identify the rule's statutory basis, but that the Commission's Consumer and Governmental Affairs Bureau issued an Order nearly a year-and-a-half later summarily dismissing the Petition.² We pointed out that the Bureau did so without seeking public comment, without resolving the substantive issues raised in the Petition, and in a manner that prevents Anda from seeking judicial review.

¹ 47 C.F.R. § 64.1200(a)(3)(iv).

² *See Junk Fax Prevention Act; Petition for Declaratory Ruling to Clarify That 47 U.S.C. § 227(b) Was Not the Statutory Basis for Commission's Rule Requiring an Opt-Out Notice for Fax Advertisements Sent with Recipient's Prior Express Consent*, Order, 27 FCC Rcd 4912 (CGB 2012).

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We urged the Commission to act quickly on Anda's Application for Review, filed in May 2012 and now pending for over a year, and to clarify that Section 227(b) of the Communications Act, which governs only unsolicited faxes, was not the statutory basis for the rule in question. We explained that if the Commission does not clarify that Section 64.1200(a)(3)(iv) was adopted pursuant to authority other than Section 227(b), class action lawsuits alleging technical violations of that provision will continue to threaten legitimate businesses with massive unwarranted liability based solely on consensual communications with their customers. By jeopardizing Anda's continued viability (not to mention the viability of other senders of solicited, business-to-business fax communications facing similar litigation risks), these lawsuits also endanger the tens of thousands of pharmacies—many of which cannot afford to keep significant amounts of generic pharmaceuticals in stock—that rely on Anda to fill orders of any size on short notice.

We also noted that Members of Congress from both parties are growing increasingly troubled by the Commission's delay of over two-and-a-half years in taking action on the substantive issues raised in Anda's Petition. In August 2011, a bipartisan group of Senate and House Members submitted a letter to Chairman Genachowski urging the Commission to address the merits of the Petition in a timely manner. Chairman Genachowski was asked again about a timeframe for addressing Anda's Petition and Application for Review in a December 2012 hearing before the House Subcommittee on Communications and Technology, and in a March 2013 hearing before the Senate Commerce Committee. On each occasion, Chairman Genachowski responded that the Commission had been working "expeditiously" or "diligently" on this matter, but to our knowledge, the Chairman's office still has not circulated an order regarding Anda's Petition and Application for Review.

Please contact the undersigned if you have any questions regarding these issues.

Sincerely,

/s/ Matthew A. Brill

Matthew A. Brill
Counsel for Anda, Inc.

cc: Rebekah Goodheart