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September 15, 2014

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

Re: Notification of Ex Parte Presentations, CG Docket Nos. 02-278, 05-338

Dear Ms. Dortch:

On September 11, 2014, representatives of Magna Chek, Inc. and its counsel met with Kurt Schroeder, Mark Stone, Aaron Garza, Nancy Stevenson, and Richard Smith of the FCC's Consumer & Governmental Affairs Bureau Policy Division.

During the meeting, we discussed Magna Chek's history and the services it provides, the pending litigation in the Northern District of Illinois, and the relation between that litigation and the petition. Magna Chek explained that it is a family-run business in operation since 1971 that provides non-destructive testing and evaluation of critical safety components to many sectors around the country, including, for example, the automotive industry to ensure braking and engine components are safe; the airline industry to ensure components such as landing gear and pilot controls are safely manufactured; the defense industry regarding component testing; amusement parks to ensure the rides are safe. We explained that Magna Chek also significantly contributes to the local community in metropolitan Detroit where it is located.

We discussed Magna Chek's petition for declaratory ruling, a finding of substantial compliance, and/or a waiver concerning application of 47 C.F.R. § 64.100(a)(4)(iii) and (iv) to Magna Chek's faxes. We urged the Commission to take prompt action in response to Magna Chek's petition and reiterated that Magna Chek faces a class action lawsuit under Section 64.1200(a)(4)(iii) and (iv) seeking massive statutory damages based solely on the failure of Magna Chek to include eight words in its opt-out notice: "failure to comply within 30 days is illegal." We explained that if this class action were certified and resolved in favor of the plaintiffs, it will result in the bankruptcy of Magna Chek despite the absence of any harm to the plaintiffs.

Magna Chek discussed its request for a finding of substantial compliance or a waiver at length. Magna Chek explained that (1) it used a third-party experienced, nationally recognized

fax sender, WestFax, who told it what language to use for an opt-out notice prior to ever sending any faxes and who transmitted all faxes on behalf of Magna Chek; (2) it employed full-time employees to personally contact individuals to seek permission to send fax advertising prior to adding individuals to a database; and (3) every fax sent had an opt-out notice that informed recipients they had a right to opt-out and provided a cost-free method for recipients to opt-out. Additionally, immediately after receiving notice of the class action lawsuit, Magna Chek revised its opt-out notice to be in full compliance.

We reiterated that the spirit of the mandatory opt-out notice rule as discussed by Congress and the Commission is to inform recipients of faxes that they have the right to opt-out from receiving future notices, and that the recipient is provided a cost-free way to opt-out.[1] Magna Chek's opt-out notices met these two principles.

We also reiterated that granting the relief sought would advance the public interest in several respects. In addition to the reasons discussed in Magna Chek's petition, Magna Chek provides a unique service that impacts people around the country and the world. If Magna Chek were to close its doors, Magna Chek's customers, employees, and the local community would all suffer.

Consistent with other petitioners' prior meetings and ex parte submissions, we reiterated that Magna Chek's potential inability to present statutory and constitutional defenses in pending judicial proceedings (in light of several courts' construction of Hobbs Act limitations) underscores the need for Commission action in response to the pending petitions. We emphasized, however, that whatever approach the Commission chooses, it must act expeditiously and issue a ruling on the merits.

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[1] S. Rep. No. 109-76, at 1 ("The purposes of this legislation are to: ...[r]equire that senders of faxes with unsolicited advertisements (i.e. 'junk faxes') provide notice of a recipient's ability to opt out of receiving any future faxes containing unsolicited advertisements and a cost-free mechanism for recipients to opt out pursuant to that notice."); Amicus Brief for the Federal Communications Commission Urging Reversal, filed February 24, 2012, *Nack v. Walburg*, 715 F.3d 680 (8th Cir. 2012) ("FCC *Nack* Brief") (stating opt-out notice requirement "provides protection against unwanted facsimile advertisements by ensuring that consumers who receive facsimile advertisements transmitted with their consent (1) are informed of their right to withdraw that consent, and (2) are provided with a cost-free mechanism by which to opt out of future facsimile advertisements if they decide to exercise that right.").

Please contact me if you have any questions regarding this meeting.

Sincerely,

Joseph P. Kincaid
Michael A. McCaskey
Julie D. Miller