

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

In the Matter of
Rules and Regulations Implementing the
Telephone Consumer Protection Act of 1991
CG Docket No. 02-278

ORDER

Adopted: September 15, 2004

Released: October 1, 2004

By the Commission:

I. INTRODUCTION

1. In this Order, we extend for a period of six months, through June 30, 2005, the effective date of our determination that an established business relationship will no longer be sufficient to show that an individual or business has given prior express permission to receive unsolicited facsimile advertisements. We also extend, through June 30, 2005, the effective date of amended rule 47 C.F.R. § 64.1200(a)(3)(i), which requires a person or entity to obtain a signed, written statement as evidence of a fax recipient’s permission. In addition, we extend the stay of the limitations on the duration of an “established business relationship” as applied to the sending of unsolicited facsimile advertisements.

II. BACKGROUND

2. On July 3, 2003, the Federal Communications Commission (Commission) released a Report and Order revising many of its telemarketing and facsimile advertising rules pursuant to the Telephone Consumer Protection Act of 1991 (TCPA). In the Report and Order, the Commission reversed its prior conclusion that an established business relationship provides companies with the necessary express permission to send faxes to their customers. The Commission determined that the established business relationship would no longer be sufficient to show that an individual or business has given express permission to receive unsolicited facsimile advertisements. Instead, the Commission

1 Amended rule 47 C.F.R. § 64.1200(a)(3)(i) provides that “a facsimile advertisement is not ‘unsolicited’ if the recipient has granted the sender prior express invitation or permission to deliver the advertisement, as evidenced by a signed, written statement that includes the facsimile number to which any advertisements may be sent and clearly indicates the recipient’s consent to receive such facsimile advertisements from the sender.”

2 See Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, CG Docket No. 02-278, Report and Order, 18 FCC Rcd 14014 (2003) (Report and Order). A summary of this Report and Order was published in the Federal Register on July 25, 2003 (68 Fed. Reg. 44144).

3 Report and Order, 18 FCC Rcd at 14127-28, para. 189.

4 Id.

concluded that the recipient's express invitation or permission must be in writing and include the recipient's signature.⁵ The recipient must clearly indicate that he or she consents to receiving such faxed advertisements from the company to which permission is given, and must provide the individual's or business's fax number to which faxes may be sent.⁶

3. On August 18, 2003, the Commission issued an *Order on Reconsideration* that extended, until January 1, 2005, the effective date of the determination that an established business relationship will no longer be sufficient to show that an individual or business has given express permission to receive unsolicited facsimile advertisements and the requirement that the sender of a facsimile advertisement first obtain the recipient's express permission in writing.⁷ We explained that comments filed after the release of the *Report and Order* indicated that many organizations may need additional time to secure this written permission from individuals and businesses to which they fax advertisements. In addition, we noted that the extension would allow the Commission the opportunity to consider any petitions for reconsideration and other filings that may be made on this issue.⁸ The Commission retained the discretion to extend the effective date further should circumstances warrant such an action.⁹

4. On October 3, 2003, the Commission released an *Order* to stay the time limitations imposed on the duration of the "established business relationship" as applied to the sending of unsolicited advertisements, until the Commission conducts a review on reconsideration.¹⁰ As a result, the established business relationship, as applied to unsolicited facsimile advertisements, will not expire after 18 months of the recipient's last purchase or transaction or three months after the last application or inquiry.

5. On July 20, 2004, the U.S. House of Representatives approved H.R. 4600, the Junk Fax Prevention Act, a bill to amend the TCPA's facsimile advertising provisions. H.R. 4600 addresses issues raised in petitions before the Commission, such as the existence of an "established business relationship" in the context of sending facsimile advertisements. The U.S. Senate also appears poised to consider a similar bill to amend the TCPA's fax rules. On July 22, 2004, the Senate Commerce Committee approved Senate bill S.2603, the Junk Fax Prevention Act of 2004, but this bill has not yet been reported to the Senate floor for a vote.

6. On August 10, 2004, the Fax Ban Coalition (Coalition)¹¹ filed a Petition for Extension of Stay of the effective date of the rules governing unsolicited facsimile advertisements adopted by the Commission in its 2003 *Report and Order*. The Coalition requests that the Commission extend the stay for an additional six months through June 30, 2005. The Coalition maintains that an extension of the stay is warranted to avoid irreparable injury to the members of the Coalition and negative impact on the

⁵ *Report and Order*, 18 FCC Rcd at 14128-29, para. 191.

⁶ *Id.*

⁷ *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02-278, Order on Reconsideration, 18 FCC Rcd 16972 at 16974-75, paras. 5-6 (*Order on Reconsideration*).

⁸ *Order on Reconsideration*, 18 FCC Rcd at 16974-75, para. 5. The Commission received numerous petitions for reconsideration and/or clarification of the telemarketing and fax rules, which are currently pending before the Commission. The vast majority of petitions address the Commission's rules on unsolicited facsimile advertisements.

⁹ *Order on Reconsideration*, 18 FCC Rcd at 16974-75, paras. 5-6.

¹⁰ *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02-278, Order, 18 FCC Rcd 19890 (2003) (*Stay Order*); see also 47 C.F.R. § 64.1200(f)(3).

¹¹ The associations and businesses of the Fax Ban Coalition "represent financial institutions, the real estate and housing communities, distributors, manufacturers, the travel industry, medical professionals, publishers, and large and small businesses." See Coalition Petition at 2.

nation's economy while Congress considers legislation to amend the TCPA. The Coalition contends that, despite overwhelming support in Congress, legislative action can not be assumed. Thus, without a further stay by the Commission, the Coalition argues that all businesses would have to undertake efforts now to comply with the Commission's new fax rules, and incur the costs associated with such efforts.¹² According to the Coalition, an extension of the stay would allow businesses to avoid these costs until Congress takes action on the proposed legislation.¹³

III. DISCUSSION

7. We now further extend, through June 30, 2005, the effective date of our determination that an established business relationship will no longer be sufficient to show that an individual or business has given express permission to receive unsolicited facsimile advertisements, as well as the amended unsolicited facsimile provisions at 47 C.F.R. § 64.1200(a)(3)(i). Section 64.1200(a)(3)(i), as amended, requires the sender of a facsimile advertisement to first obtain from the recipient a signed, written statement that includes the facsimile number to which any advertisements may be sent and clearly indicates the recipient's consent to receive such facsimile advertisements from the sender. In light of recent action by the U.S. House of Representatives to amend the TCPA and similar proposed legislation in the U.S. Senate, we believe the public interest would best be served by delaying the effective date of the written consent requirement for six months to allow Congress to act. Should Congress not act in this regard, a further extension will provide the Commission requisite time to address the petitions for reconsideration filed on these issues. For these same reasons, through June 30, 2005, the 18-month limitation on the duration of the established business relationship based on purchases and transactions and the three-month limitation on applications and inquiries will not apply to the transmission of facsimile advertisements.

8. We emphasize that our existing TCPA rules prohibiting the transmission of unsolicited advertisements to a telephone facsimile machine will remain in effect during the pendency of this extension. Under these rules, those transmitting facsimile advertisements must have an established business relationship or prior express permission from the facsimile recipient to comply with our rules.

IV. ORDERING CLAUSES

9. Accordingly, IT IS ORDERED that, pursuant to Sections 1-4, 227, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154, 227, and 303(r), this Order in CG Docket No. 02-278 IS ADOPTED and that the Report and Order, FCC 03-153, IS MODIFIED as set forth herein.

10. IT IS FURTHER ORDERED, that the Fax Ban Coalition's Petition for Extension of Stay is GRANTED to the extent discussed herein.

¹² Coalition Petition at 2, 8. The Coalition indicates that the possibility of congressional action is not infinite; that the pending legislation will either be adopted or fail by the time Congress adjourns, which could occur in mid-October and by law must occur by January 3, 2005. See Coalition Petition at 6.

¹³ Coalition Petition at 8.

11. IT IS FURTHER ORDERED, that the effective date for the Commission's determination that an established business relationship will no longer be sufficient to show that an individual or business has given their express permission to receive unsolicited facsimile advertisements and the requirement that the sender of a facsimile advertisement first obtain the recipient's express permission in writing, as codified at 47 C.F.R. § 64.1200(a)(3)(i), IS July 1, 2005, and that this Order is effective upon publication in the Federal Register.¹⁴

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

¹⁴ In light of the fact that entities were originally required to comply with the amended faxing requirements beginning January 1, 2005, we find good cause, pursuant to 5 U.S.C. § 553(d) to make this effective on less than thirty days' notice.