

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

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

Adopted: September 26, 2003

Released: October 3, 2003

By the Commission:

I. INTRODUCTION

1. In this Order, we stay, for an interim period, the limitations imposed in section 64.1200(f)(3) on the duration of an “established business relationship” as applied to the sending of unsolicited facsimile advertisements.¹ As a result, 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 pending either a decision on this issue on reconsideration or January 1, 2005, when the extension of the established business relationship to unsolicited facsimile advertisements is due to expire.²

II. BACKGROUND

2. On July 3, 2003, the 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).³ 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 unsolicited facsimile advertisements to prospective customers. Specifically,

¹ 47 C.F.R. § 64.1200(f)(3).

² See *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02-278, Order on Reconsideration, FCC 03-208 (rel. Aug. 18, 2003) (*Order on Reconsideration*).

³ 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*).

the Commission concluded 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 required by the TCPA. Instead, the Commission concluded that the recipient's express invitation or permission must be obtained in writing and include the recipient's signature. At that time, the Commission also modified its definition of an established business relationship in the context of telephone solicitations to limit the duration of such relationships to eighteen months in the case of purchases or transactions and three months in the case of inquiries or applications.⁴ Prior to this modification, no limitation had been placed on the duration of the established business relationship as it applied to both telephone solicitations and unsolicited facsimile advertisements.

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.⁵ In so doing, the Commission noted that, in light of new information, the public interest would best be served by allowing the sender of such advertisements additional time to obtain such express permission before the new rules become effective. In addition, the Commission noted that this extension will allow the Commission the opportunity to consider any petitions for reconsideration and other filings that may be made on this issue. On August 25, 2003, the Chamber of Commerce of the United States filed a petition for reconsideration of the facsimile advertisement rules requesting, among other things, that the Commission reconsider its conclusion that an established business relationship will expire 18 months after the recipient's last transaction or three months after the last inquiry.⁶

III. DISCUSSION

4. We now stay, for an interim period, the limitations imposed in section 64.1200(f)(3) on the duration of an "established business relationship" as it applies to the sending of unsolicited facsimile advertisements. During this interim period, 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. Given that the Commission's adoption of the modified established business relationship definition in the *Report and Order* was limited to its application to telephone solicitations, we believe that good cause exists to stay application of the time limitations imposed on the established business relationship in the context of facsimile advertisements until the Commission conducts a review on reconsideration.⁷ We emphasize that nothing in this Order impacts our conclusion in the *Order on Reconsideration* that an established business relationship constitutes sufficient permission to send a facsimile advertisement until January 1, 2005.

⁴ *Order*, 18 FCC Rcd at 14079, para. 113.

⁵ *Order on Reconsideration* at paras. 5-6.

⁶ See, e.g., Chamber of Commerce of the United States, Petition for Reconsideration of Facsimile Advertisements Rules, filed August 25, 2003 (Chamber Petition); National Association of Chain Drug Stores, Petition for Clarification and Revision, filed August 25, 2003.

⁷ See, e.g., Chamber Petition at 2.

5. We note, however, that in the absence of any Commission action on this issue prior to January 1, 2005, the Commission's 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 will go into effect as required by the *Order on Reconsideration*.

6. The actions contained herein have not changed our Final Regulatory Flexibility Analysis (FRFA), which is set forth in the *Report and Order*. Thus, no supplemental FRFA is necessary. In addition, the action contained herein imposes no new or modified reporting and/or recordkeeping requirements or burdens on the public.

IV. ORDERING CLAUSES

7. 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); and Section 1.429 of the Commission's Rules, 47 C.F.R. § 1.429, this Order in CG Docket No. 02-278 IS ADOPTED as set forth herein.

8. IT IS FURTHER ORDERED, that this Order is effective upon publication in the Federal Register.⁸

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

⁸ In light of the fact that this Order imposes no new obligations, we find good cause, pursuant to 5 U.S.C. § 553(d), to make this Order effective on less than thirty days' notice.