



INDEPENDENT SECTOR

A vital voice for us all

January 18, 2006

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Federal Communications Commission
Office of the Secretary
445 12th Street, SW
Washington, DC 20554

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Re: RE: Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991 (CG Docket No. 05-338; FCC 05-206)

Dear Ms. Dortch:

Independent Sector, a national, nonprofit organization with over 500 member charities, foundations, and corporate philanthropy programs, is submitting these comments in response to the Federal Communications Commission's proposed established business relationship exemption to the fax advertisement rules. We believe this exemption will facilitate fax communications between nonprofit organizations and their members, and we welcome the opportunity to comment on the Commission's proposed rule. Our responses to specific questions raised by the Commission are detailed below.

Proposed Definition of Established Business Relationship

The proposed limitation on the established business relationship (EBR) exemption created by the Junk Fax Prevention Act of 2005 to 18 months following purchases and transactions and 3 months following applications and inquiries is not practical for tax-exempt nonprofit organizations. The telephone solicitation rules from which those limits are drawn do not currently apply to charitable solicitations by 501(c)(3) organizations. The relationship between nonprofits and their members, donors and volunteers does not fit the typical commercial model of an established business relationship. Nonprofit organizations frequently communicate with many individuals who are interested in their mission or programs, but who often do not make a purchase or transaction within the defined 18 month period or request information as frequently as every three months. For example, if Independent Sector was contacted by a nonmember about our annual conference six months before any conference materials were ready to send, the EBR would have expired before we were able to send the requested materials. Similarly, individuals who contact our organization about our meetings and services may not choose to attend the meetings or purchase materials every year, but they still would like to receive information on a regular basis. Independent Sector therefore

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respectfully suggests that the time period for the EBR should apply for the 18 months following both transactions and inquiries.

Obtaining Fax Numbers

Independent Sector believes that Section 2 (a) of the Junk Fax Prevention Act provides sufficiently clear guidance regarding the acceptable methods by which the sender may obtain fax numbers.¹ We do not recommend that the Commission add any further parameters at this time.

Opt-Out Notice

The Junk Fax Prevention Act requires senders of faxed advertisements to place a clear and conspicuous notice on the first page of the fax informing recipients how to opt out of receiving such faxes in the future. Because any recipient of a fax message who believes that the notice is not “clear and conspicuous” has the right to file a complaint with the Commission, exempt organizations that send faxed advertisements have a clear incentive to ensure that its fax communications include an appropriate opt-out message. Independent Sector does not believe it is necessary for the Commission to provide further restrictions that could lead to inadvertent errors by senders of faxed advertisements.

Opt-Out Compliance

Independent Sector agrees that the 30-day requirement for honoring opt-out requests should be sufficient for both telephone solicitations and faxed advertisements. Many exempt organizations will be able to fulfill opt-out requests in a shorter time frame, but the 30-day period provides sufficient room for smaller organizations that do not have sophisticated database systems or full-time personnel assigned to data entry and maintaining member contact information and communication preferences.

Independent Sector further recommends that the Commission permit organizations to meet the requirement of offering a cost-free mechanism for recipients to opt out of receiving future messages by providing options via email or the Internet. The cost of maintaining a toll-free telephone number as a cost-free mechanism would be prohibitive for many nonprofit organizations and should not be required.

Definition of Unsolicited Advertisement

The Junk Fax Prevention Act also modified the definition of unsolicited advertisement so that it now reads:

“The term unsolicited advertisement means any material advertising the commercial availability or quality of any property, goods, or services which is transmitted to any person without that person’s prior express invitation or permission, in writing or otherwise.”²

¹ The two acceptable methods are 1) voluntary communication from the recipient and, 2) through a directory, advertisement or site on the Internet to which the recipient voluntarily agreed to make its fax number available for public distribution.

² The Telephone Consumer Protection Act of 1991, 47 USC § 227(a) (4), *as amended* by the Junk Fax Prevention Act of 2005, Pub. L. 109-21, 119 Stat. 359.

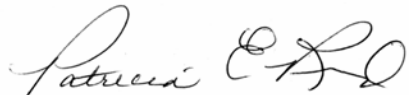
Independent Sector believes that adding the option for oral permission is consistent with Congress' intent when it amended the definition of unsolicited advertisement by inserting "*in writing or otherwise*" in the statute and that the Commission should therefore include the option for oral permission in the rule.

Nonprofit Exception from Opt-Out Notice Requirement

Independent Sector recommends that the Commission exempt professional or trade associations that are tax-exempt nonprofit organizations from providing opt-out notices on faxed advertisements to their members in furtherance of their tax-exempt purpose. Because nonprofit organizations have an ongoing relationship with their members, it is unnecessary and unreasonable to expect that every message include information about how to opt-out of receiving information via a particular format, be it fax or email. This is particularly true when the intent of the message is to convey substantive program information, even though the message may also include announcements of upcoming events, services or products available for purchase. Providing this exemption would not violate the primary intent of the Junk Fax Prevention Act, which is to restrict unsolicited fax communications.

We thank the Commission for this opportunity to comment on this important issue. Please feel free to contact me if you have further questions or need additional information.

Sincerely,

A handwritten signature in cursive script that reads "Patricia Read".

Patricia Read
Senior Vice President, Public Policy and Government Affairs
Independent Sector