



PUBLIC NOTICE

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FCC CONFIRMS OPT-OUT NOTICE REQUIREMENTS APPLICABLE TO ALL FAX ADVERTISEMENTS

CG Docket No. 02-278
CG Docket No. 05-338

In an Order released today,¹ the Federal Communications Commission (Commission) confirmed that opt-out notices are required on **all** fax ads, and such notices must conform to the rules adopted by the Commission in its *2006 Junk Fax Order*.² The Commission also acted on individual requests for waiver, granting retroactive relief to parties that were reasonably uncertain about whether the opt-out notice requirement applied to faxes sent with the recipient's prior permission. The Commission provided a six-month window from October 30, 2014 for these waiver recipients to come into full compliance. Finally, the Commission noted that similarly situated parties may seek waiver requests and emphasized that such parties should make every effort to file such requests prior to April 30, 2015. Absent a waiver, however, full compliance is currently expected, and any past or future failure to comply could subject entities to enforcement sanctions, including potential fines and forfeitures, and to private litigation.

Specifically, today's decision eliminates any confusion or erroneous interpretation regarding the applicability of FCC rules to all fax ads. The FCC's rules require that a "facsimile advertisement that is sent to a recipient that has provided prior express invitation or permission to the sender **must** include an opt-out notice that complies with the requirements in [section 64.1200(a)(4)(iii)]."³ The rules specify that the opt-out notice contained in fax ads must:

- (1) be clear and conspicuous and on the first page of the ad;
- (2) state that the recipient may make a request to the sender not to send any future ads and that failure to comply, within 30 days, with such a request is unlawful; and,

¹ See *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991; Junk Fax Prevention Act of 2005; Application for Review filed by Anda, Inc.; Petitions for Declaratory Ruling, Waiver, and/or Rulemaking Regarding the Commission's Opt-Out Requirement for Faxes Sent with the Recipient's Prior Express Permission*, CG Docket Nos. 02-278, 05-338, Order, FCC 14-164 (rel October 30, 2014) (*Fax Order*).

² See, e.g., *id.* at para. 33 (rejecting an argument that a fax ad sent with an opt-out notice to a recipient that has provided prior permission does not violate the regulation if contains some, but not all of the information required under the rule).

³ See 47 C.F.R. § 64.1200(a)(4)(iv) (emphasis added).

(3) contain a domestic contact telephone number and fax number for the recipient to transmit an opt-out request.⁴ Fax ads sent pursuant to an established business relationship must also contain this opt-out information.⁵

Even if the fax sender places an opt-out notice on its fax ad, it will not comply with the law unless the opt-out notice satisfies each requirement contained in the rule.

Also today, the Commission recognized that a number of parties who have sent fax ads with the recipient's prior express permission may have reasonably been uncertain about whether the requirement for an opt-out notice applied to such "solicited" faxes, or erroneously believed that this requirement did not apply to such faxes. As such, the Commission granted retroactive waivers of this requirement to these fax senders to provide them with temporary relief from any past obligation to provide opt-out notices to fax recipients as required by FCC rules.⁶ At the same time, the Commission denied several requests for declaratory ruling that sought a ruling that the Commission lacked the statutory authority to require opt-out information on fax ads sent with a consumer's prior express permission or, alternatively, that section 227(b) of the Communications Act of 1934, as amended (the Act), was not the statutory basis of that requirement.⁷ The Commission also confirmed that such faxes must include a fully compliant opt-out notice.⁸

The Commission has provided a six-month window from October 30, 2014 for these waiver recipients to come into full compliance with the opt-out notice requirement. After this date, all waiver recipients must include the opt-out notice in the precise manner required by FCC rules.⁹ As noted, this waiver applies only to the individual petitioners listed in the *Fax Order*. Other, similarly situated parties may also seek waivers. The Commission emphasized that in light of its confirmation that a fax ad sent with the recipient's prior express permission must include a fully compliant opt-out notice, we expect these parties to make every effort to file such requests prior to April 30, 2015. The Commission stated that all future waiver requests will be adjudicated on a case-by-case basis.

Additional information can be found at: <http://www.fcc.gov/guides/fax-advertising>.

⁴ *See id.* § 64.1200(a)(4)(iii). If neither the required telephone number nor fax number is a toll-free number, a separate cost-free mechanism including a Web site address or email address, must be provided for a recipient to transmit a request to opt-out of future faxes. The telephone and fax number and cost-free mechanism identified in the notice must permit an individual or business to make an opt-out request 24 hours a day, seven days a week. Section § 64.1200(a)(3)(iii).

⁵ *Id.* § 64.1200(a)(4)(i)-(iii). Fax ads that are unsolicited – i.e., sent without the recipient's consent or an established business relationship with the recipient – are unlawful. *See id.* § 64.1200(a)(4).

⁶ This waiver does not extend to a similar requirement to include opt-out notices on fax ads sent pursuant to an established business relationship, as there is no confusion regarding the applicability of this requirement to such faxes. *See* 47 C.F.R. § 64.1200(a)(4)(iii). Nor does this waiver affect the prohibition against sending unsolicited fax ads. *See id.* § 64.1200(a)(4).

⁷ *See Fax Order* at paras. 14, 19.

⁸ *See id.* at para. 33.

⁹ As a result, the waiver does not apply to such conduct by these parties that occurs more than six months after the release date of the Order, nor to any situation other than where the fax sender has obtained the prior express invitation or permission of the recipient to receive the fax ad.

FOR FURTHER INFORMATION CONTACT: Richard D. Smith, Consumer and Governmental Affairs Bureau, Federal Communications Commission, (717) 338-2797; or Richard.Smith@fcc.gov.

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