

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

In the Matter of )
Rules and Regulations Implementing the ) CG Docket No. 02-278
Telephone Consumer Protection Act of 1991 )
Junk Fax Prevention Act of 2005 ) CG Docket No. 05-338
Petitions for Declaratory Ruling and Retroactive )
Waiver of 47 CFR § 64.1200(a)(4)(iv) Regarding )
the Commission’s Opt-Out Notice Requirement )
for Faxes Sent with the Recipient’s Prior Express )
Permission )

ORDER

Adopted: November 2, 2016

Released: November 2, 2016

By the Chief, Consumer and Governmental Affairs Bureau:

I. INTRODUCTION

1. With this Order, the Consumer and Governmental Affairs Bureau (Bureau) addresses 26 waiver requests<sup>1</sup> that seek relief similar to that granted in the Commission’s 2014 fax opt-out notice

1 See Petition of Virbac Corporation for Waiver, CG Docket Nos. 02-278, 05-338 (filed Nov. 9, 2015) (Virbac Petition); Petition of Fetch, Inc. d/b/a Petplan for Retroactive Waiver of 47 CFR § 64.1200(a)(4)(iv), CG Docket Nos. 02-278, 05-338 (filed Nov. 25, 2015) (Petplan Petition); Petition of AZCOMP Technologies, Inc. for Retroactive Waiver of 47 CFR § 64.1200(a)(4)(iv), CG Docket Nos. 02-278, 05-338 (filed Dec. 4, 2015) (Azcomp Petition); Petition of Weinberg & Associates, Inc. for Retroactive Waiver of 47 CFR § 64.1200(a)(4)(iv), CG Docket Nos. 02-278, 05-338 (filed Dec. 8, 2015) (Weinberg Petition); Petition of Humana Insurance Company, et al. for Retroactive Waiver of 47 CFR § 64.1200(a)(4)(iv), CG Docket Nos. 02-278, 05-338 (filed Dec. 18, 2015) (Humana Petition); Petition of Posture Pro, Inc. for Retroactive Waiver of 47 CFR § 64.1200(a)(4)(iv), CG Docket Nos. 02-278, 05-338 (filed Feb. 23, 2016) (Posture Pro Petition); Petition of LKN Communications, Inc. d/b/a ACN, Inc. for Waiver of Section 47 CFR 64.1200(a)(4)(iv) of the Commission’s Rules, CG Docket Nos. 02-278, 05-338 (filed Mar. 1, 2016) (LKN Petition); Petition of Educational Testing Service for Retroactive Waiver of 47 CFR § 64.1200(a)(4)(iv), CG Docket Nos. 02-278, 05-338 (filed Mar. 16, 2016) (ETS Petition); Petition of Inter-Med, Inc. d/b/a Vista Dental Products for Retroactive Waiver of 47 CFR § 64.1200(a)(4)(iv), CG Docket Nos. 02-278, 05-338 (filed Mar. 25, 2016) (Inter-Med Petition); Petition of Legal & General America, Inc. for Waiver of Section 47 CFR 64.1200(a)(4)(iv) of the Commission’s Rules, CG Docket Nos. 02-278, 05-338 (filed Mar. 31, 2016) (LGA Petition); Petition of Jeana Fleitz, LLC d/b/a The X-Ray Lady for Retroactive Waiver of 47 CFR § 64.1200(a)(4)(iv), CG Docket Nos. 02-278, 05-338 (filed Apr. 06, 2016) (Fleitz Petition); Petition of C. Specialties, Inc. for Waiver of Section 64.1200(a)(4)(iv) of the Commission’s Rules, CG Docket Nos. 02-278, 05-338 (filed Apr. 26, 2016) (CSI Petition); Petition of Buccaneers Limited Partnership for Retroactive Waiver of 47 CFR § 64.1200(a)(4)(iv), CG Docket Nos. 02-278, 05-338 (filed Apr. 28, 2016) (Buccaneers Petition); Petition of Warner Chilcott Corporation for Waiver of Section 64.1200(a)(4)(iv) of the Commission’s Rules, CG Docket Nos. 02-278, 05-338 (filed May 20, 2016) (Warner Petition); Petition of Wedgewood Village Pharmacy, Inc. for Retroactive Waiver of 47 CFR § 64.1200(a)(4)(iv) of the Commission’s Rules, CG Docket Nos. 02-278, 05-338

(continued...)

order.<sup>2</sup> Specifically, we grant waivers to 22 petitioners<sup>3</sup> that are similarly situated to the waiver recipients previously granted relief by the Commission due to uncertainty about whether the opt-out notice requirement applies to fax advertisements sent with recipient consent.<sup>4</sup> We reiterate that the rule remains in effect as an easy, cost-free means for fax recipients to avoid faxes they previously wanted but no longer wish to receive. In the *2014 Anda Commission Order*, the Commission clarified the rule and explained that the waivers granted therein would not apply to faxes sent more than six months from the release date of the order, *i.e.*, by April 30, 2015.<sup>5</sup> We thus emphasize that the recipients of the waivers granted herein should already be in compliance after having benefited from the Commission's previous clarification.

2. Of the four remaining petitions, we:

- Grant in part one petition<sup>6</sup> for faxes sent before April 30, 2015 and deny in part for faxes sent after that date, consistent with Commission precedent;<sup>7</sup> and,

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(filed May 24, 2016) (Wedgewood Petition); *Petition of Roche Diagnostics Corporation & Roche Diabetes Care, Inc. for Waiver of 47 Section 64.1200(a)(4)(iv) of the Commission's Rules*, CG Docket Nos. 02-278, 05-338 (filed June 2, 2016) (Roche Petition); *Petition of Amatheon, Inc. for Waiver*, CG Docket Nos. 02-278, 05-338 (filed June 3, 2016) (Amatheon Petition); *Petition of HomeoPet, LLC for Retroactive Waiver of 47 CFR § 64.1200(a)(4)(iv)*, CG Docket Nos. 02-278, 05-338 (filed June 13, 2016) (HomeoPet Petition); *Petition of Synchrony Bank d/b/a CareCredit & Synchrony Financial for Retroactive Waiver of 47 CFR § 64.1200(a)(4)(iv)* (Synchrony Petition); *Petition of Cochran Wholesale Pharmaceutical, Inc. for Retroactive Waiver*, CG Docket Nos. 02-278, 05-338 (filed June 14, 2016, amended July 1, 2016) (Cochran Petition); *North American Bancard, LLC for Waiver of 47 CFR § 64.1200(a)(4)(iv)*, CG Docket Nos. 02-278, 05-338 (filed Aug. 16, 2016) (NAB Petition); *Petition of Cartridge World North America, LLC for Waiver of Section 64.1200(a)(4)(iv) of the Commission's Rules*, CG Docket Nos. 02-278, 05-338 (filed Aug. 24, 2016) (Cartridge Petition); *Petition of Biolase, Inc. for Retroactive Waiver of 47 CFR § 64.12500(a)(4)(iv)*, CG Dockets 02-278, 05-338 (filed Sept. 9, 2016) (Biolase Petition); *Petition for Waiver of Power Products LLC d/b/a Del City Wire Co., Inc.*, CG Docket Nos. 02-278, 05-338 filed Sept. 9, 2016) (Del City Petition); *Petition of Schwabe North America, Incorporated, et al. for Waiver of Section 64.1200(a)(4)(iv) of the Commission's Rules*, CG Docket Nos. 02-278, 05-338 (filed Sept. 19, 2016) (Schwabe Petition); *Petition of Amsterdam Printing & Litho, Inc. for Retroactive Waiver for Temporary Relief From Past Requirements of 47 CFR § 64.1200(a)(4)(iv) as Applicable to Solicited Faxes*, CG Docket Nos. 02-278, 05-338 (filed Sept. 27, 2016) (Amsterdam Petition) (collectively Petitioners). One additional petition was withdrawn; therefore, we will not address it here. See *Petition of Advanced Care Scripts, Inc. for Waiver*, CG Docket Nos. 02-278, 05-338 (filed Nov. 12, 2015) (ACS Petition); *Joint Withdrawal of Petition of Advanced Care Scripts for Waiver and Related Comments and Pleadings*, CG Docket Nos. 02-278, 05-338 (filed Mar. 1, 2016).

<sup>2</sup> See *Petition 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, 29 FCC Rcd 13998 (2014) (*2014 Anda Commission Order*).

<sup>3</sup> See Virbac Petition; Weinberg Petition; Humana Petition; Posture Pro Petition; LKN Petition; ETS Petition; Inter-Med Petition; LGA Petition; Fleitz Petition; CSI Petition; Buccaneers Petition; Warner Petition; Wedgewood Petition; Roche Petition; Amatheon Petition; HomeoPet Petition; Synchrony Petition; Cochran Petition; NAB Petition; Biolase Petition; Del City Petition; Schwabe Petition.

<sup>4</sup> The petitioners do not seek a waiver of a similar requirement that they include an opt-out notice 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 CFR § 64.1200(a)(4)(iii). We also note that the waivers do not affect the prohibition against sending unsolicited fax ads, which has remained in effect since its original effective date. See 47 CFR § 64.1200(a)(4).

<sup>5</sup> See *2014 Anda Commission Order*, 29 FCC Rcd at 14011, para. 29.

<sup>6</sup> See Amsterdam Petition.

<sup>7</sup> See *2014 Anda Commission Order*, 29 FCC Rcd at 14011, para. 29.

- Deny three of the petitions<sup>8</sup> insofar as the petitioners admit to being unaware of the opt-out notice requirement and, therefore, not similarly situated to the initial waiver recipients, consistent with the Commission's statement that "simple ignorance of the TCPA or the Commission's attendant regulations is not grounds for waiver."<sup>9</sup>

3. Finally, we deny three related requests for declaratory ruling<sup>10</sup> insofar as they seek 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. The Commission has previously denied substantially similar requests.<sup>11</sup>

## II. BACKGROUND

### A. Telephone Consumer Protection Act

4. In 1991, Congress enacted the Telephone Consumer Protection Act (TCPA).<sup>12</sup> In relevant part, the TCPA prohibits the use of any telephone facsimile (fax) machine, computer, or other device to send an "unsolicited advertisement" to a telephone fax machine.<sup>13</sup> In 1992, the Commission adopted rules implementing the TCPA, including restrictions on the transmission of unsolicited fax ads to fax machines.<sup>14</sup>

5. In 2005, Congress enacted the Junk Fax Prevention Act, which amended the fax advertising provisions of the TCPA.<sup>15</sup> Among other things, the law: (1) codified an established business relationship (EBR) exception to the prohibition on sending unsolicited fax ads;<sup>16</sup> (2) provided a definition of EBR to be used in the context of unsolicited fax ads;<sup>17</sup> (3) required the sender of an unsolicited fax ad to provide specified notice and contact information on the fax that allows recipients to "opt out" of any future fax transmissions from the sender;<sup>18</sup> and (4) specified the circumstances under which a request to "opt out" complies with the Act.<sup>19</sup> In 2006, the Commission adopted the *Junk Fax Order*, amending the rules concerning fax transmissions as required by the Junk Fax Prevention Act and addressing certain

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<sup>8</sup> See Petplan Petition; Azcomp Petition; Cartridge Petition.

<sup>9</sup> 2014 *Anda Commission Order*, 29 FCC Rcd at 14010, para. 26.

<sup>10</sup> See ETS Petition; CSI Petition; Warner Petition.

<sup>11</sup> See 2014 *Anda Commission Order*, 29 FCC Rcd at 14004, para. 14.

<sup>12</sup> The TCPA is codified as section 227 of the Act, 47 U.S.C. § 227.

<sup>13</sup> See 47 U.S.C. § 227(b)(1)(C). As the legislative history explained, because fax machines "are designed to accept, process, and print all messages which arrive over their dedicated lines," fax advertising imposes burdens on unwilling recipients that are distinct from the burdens imposed by other types of advertising. See H.R. Rep. No. 317, 102d Cong., 1<sup>st</sup> Sess. 11 (1991).

<sup>14</sup> See *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CC Docket No. 92-90, Report and Order, 7 FCC Rcd 8752 (1992) (*1992 TCPA Order*); see also 47 CFR § 64.1200(a)(4).

<sup>15</sup> See Junk Fax Prevention Act of 2005, Pub. L. No. 109-21, 119 Stat. 359 (2005) (Junk Fax Prevention Act).

<sup>16</sup> See *id.* sec. 2(a); 47 U.S.C. § 227(b)(1)(C)(i).

<sup>17</sup> See Junk Fax Prevention Act sec. 2(b); 47 U.S.C. § 227(a)(2).

<sup>18</sup> See Junk Fax Prevention Act sec. 2(c); 47 U.S.C. § 227(b)(2)(D).

<sup>19</sup> See Junk Fax Prevention Act sec. 2(d); 47 U.S.C. § 227(b)(2)(E).

issues raised in petitions for reconsideration concerning the Commission's fax advertising rules.<sup>20</sup> As part of that Order, the Commission adopted a rule that a fax advertisement "sent to a recipient that has provided prior express invitation or permission to the sender must include an opt-out notice."<sup>21</sup> A summary of the *Junk Fax Order* was published in the Federal Register on May 3, 2006.<sup>22</sup>

## B. The Anda Proceeding

6. In 2010, Anda, Inc. (Anda) sought a declaratory ruling on the opt-out rule as applied to fax ads sent with recipient consent. Specifically, Anda asked the Commission to find that: (1) it lacked any authority to adopt a rule requiring an opt-out notice on fax ads sent with the recipient consent; or (2) in the alternative, section 227(b) of the Act is not the statutory basis for the rule.<sup>23</sup> In 2012, the Bureau dismissed Anda's petition<sup>24</sup> finding that the Commission had the authority to adopt the rule and that section 227(b) (part of the TCPA) was in fact a basis of that authority.<sup>25</sup> The Bureau also found that the Commission had clearly set forth the rule's requirement and found no controversy to terminate or uncertainty to remove.<sup>26</sup>

7. Anda sought Commission review of the Bureau decision, reiterating its earlier arguments that the Commission lacked authority to adopt the rule or, alternatively, that the TCPA was not the basis for the rule.<sup>27</sup> After Anda filed its Application for Review, a number of parties filed petitions seeking various forms of relief. In general, these petitioners contended that there was controversy and uncertainty over the scope of and statutory basis for the rule and that the Commission offered confusing and conflicting statements regarding the applicability of the rule to solicited faxes.<sup>28</sup>

8. On October 30, 2014, the Commission denied Anda's Application for Review, affirming that the Commission's rules require opt-out notices to appear on all fax ads, and granting limited retroactive waivers to petitioners.<sup>29</sup> Specifically, the Commission found that the record indicated that a footnote contained in the *Junk Fax Order* caused confusion regarding the applicability of the opt-out notice requirement to faxes sent to recipients who provided prior express permission.<sup>30</sup> The Commission also found that the associated Notice of Proposed Rulemaking did not explicitly indicate that the Commission was contemplating an opt-out requirement on faxes sent with the recipient's prior express

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<sup>20</sup> *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, Junk Fax Prevention Act of 2005*, CG Docket Nos. 02-278, 05-338, Report and Order and Third Order on Reconsideration, 21 FCC Rcd 3787 (2006) (*Junk Fax Order*).

<sup>21</sup> 47 CFR § 64.1200(a)(4)(iv); *see also Junk Fax Order*, 21 FCC Rcd at 3812, para. 48.

<sup>22</sup> *See* 71 FR 25967 (May 3, 2006).

<sup>23</sup> *See generally Junk Fax Prevention Act of 2005, Petition for Declaratory Ruling to Clarify that 47 U.S.C. § 227(b) Was Not the Statutory Basis for Commission's Rules Requiring an Opt-Out Notice for Fax Advertisements Sent with Recipient's Prior Express Consent*, CG Docket No. 05-338, Order, 27 FCC Rcd 4912 (CGB 2012) (*2012 Anda Order*).

<sup>24</sup> *See id.*

<sup>25</sup> *See id.* at 4914, para. 5.

<sup>26</sup> *See id.*

<sup>27</sup> *See* Anda, Inc. Application for Review, CG Docket No. 05-338, at 10-13 (filed May 14, 2012).

<sup>28</sup> *See 2014 Anda Commission Order*, 29 FCC Rcd at 14002, para. 10.

<sup>29</sup> *See generally 2014 Anda Commission Order*.

<sup>30</sup> *See id.* at 14008-12, paras. 22-31.

permission.<sup>31</sup> As a result, the Commission found that good cause existed to grant limited retroactive waivers to those petitioners who sent fax ads to recipients who had provided prior express consent to receive them.<sup>32</sup> The Commission emphasized that full compliance with the rule would be required within six months from the release of the order (*i.e.*, by April 30, 2015).<sup>33</sup> The Commission stated that similarly situated parties could seek similar waivers.<sup>34</sup>

### C. Petitions for Retroactive Waiver of 47 CFR § 64.1200(a)(4)(iv)

9. Since the release of the *2014 Anda Commission Order* and the Bureau's subsequent August 2015<sup>35</sup> and December 2015<sup>36</sup> orders, there are 26 additional pending petitions seeking waiver of the rule.<sup>37</sup> In general, the petitioners contend they are similarly situated to the petitioners who received a waiver in the Commission's and Bureau's 2014 and 2015 Orders.<sup>38</sup> Specifically, petitioners assert that they sent faxes without compliant opt-out notices to recipients who had previously provided permission or consent to receive them<sup>39</sup> and that such faxes should not be subject to TCPA liability because there was industry-wide confusion caused by the seemingly contradictory statements contained in a footnote in the *Junk Fax Order* and the rule.<sup>40</sup>

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<sup>31</sup> *See id.*

<sup>32</sup> *See id.* at 14010-12, paras. 26-28.

<sup>33</sup> *See id.* at 14011, para. 29.

<sup>34</sup> *See id.* at 14011-12, para. 30.

<sup>35</sup> *See Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991; Junk Prevention Act of 2005; Petitions for Declaratory Ruling and Retroactive Waiver of 47 CFR § 64.1200(a)(4)(iv) Regarding the Commission's Opt-Out Notice Requirement for Faxes Sent with the Recipient's Prior Express Permission*, CG Docket Nos. 02-278, 05-338, Order, 30 FCC Rcd 8598 (CGB 2015) (*August 2015 Order*).

<sup>36</sup> *See Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991; Junk Prevention Act of 2005; Petitions for Declaratory Ruling and Retroactive Waiver of 47 CFR § 64.1200(a)(4)(iv) Regarding the Commission's Opt-Out Notice Requirement for Faxes Sent with the Recipient's Prior Express Permission*, CG Docket Nos. 02-278, 05-338, Order, 30 FCC Rcd 14057 (CGB 2015) (*December 2015 Order*).

<sup>37</sup> *See supra* n.1. As noted above, one petition was withdrawn. We therefore address here only the remaining 26 petitions.

<sup>38</sup> *See* Virbac Petition at 3; Petplan Petition at 2, 5; Azcomp Petition at 1, 5; Weinberg Petition at 3; Humana Petition at 5; Posture Pro Petition at 2, 5; LKN Petition at 3; ETS Petition at 8; Inter-Med Petition at 5; LGA Petition at 2, 5; Fleitz Petition at 4; CSI Petition at 1-2, 6; Buccaneers Petition at 1; Warner Petition at 1-2, 6; Wedgewood Petition at 6; Roche Petition at 1, 4; Amatheon Petition at 3, 5; HomeoPet Petition at 1; Synchrony Petition at 3; Cochran Petition at 4; NAB Petition at 6, 7-8; Cartridge Petition at 6; Biolase Petition at 7; Del City Petition at 2, 8; Schwabe Petition at 1, 7, 8; Amsterdam Petition at 1, 3.

<sup>39</sup> *See* Virbac Petition at 2; Petplan Petition at 5; Azcomp Petition at 1, 5; Weinberg Petition at 1, 4; Humana Petition at 1, 5; Posture Pro Petition at 1, 5; LKN Petition at 1; ETS Petition at 1, 3; Inter-Med Petition at 1; LGA Petition at 1; Fleitz Petition at 1; CSI Petition at 1, 2; Buccaneers Petition at 1, 4; Warner Petition at 1, 2; Wedgewood Petition at 1; Roche Petition at 1; Amatheon Petition at 1, 2; HomeoPet Petition at 1; Synchrony Petition at 1; Cochran Petition at 1; NAB Petition at 1, 7; Cartridge Petition at 1, 2, 7; Biolase Petition at 1; Del City Petition at 8; Schwabe Petition at 1, 5; Amsterdam Petition at 1, 3.

<sup>40</sup> *See* Virbac Petition at 2; Virbac Reply Comments at 6; Weinberg Petition at 4; Humana Petition at 4-5; Posture Pro Petition at 3-4, 6; Posture Pro Reply Comments at 4; LKN Petition at 2-3; ETS Petition at 3-4, 7; ETS Reply Comments at 9; Inter-Med Petition at 3, 4; LGA Petition at 4-5, 6; LGA Reply Comments at 2; Fleitz Petition at 2-4; CSI Petition at 1-2, 4, 7; Warner Petition at 1-2, 4, 5-6, 7; Wedgewood Petition at 4, 6; Amatheon Petition at 3,

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10. The Commission sought comment on the petitions.<sup>41</sup> Individual and corporate consumers filed comments opposing the petitions.<sup>42</sup> Opponents of the petitions generally argue that the current petitioners are not similarly situated to the initial waiver recipients because: (1) they have not established and/or cannot establish that they received the prior express permission or consent of fax recipients prior to sending fax advertisements;<sup>43</sup> (2) they do not specifically assert that they were, in fact, confused;<sup>44</sup> and/or the petitions were not filed in a timely manner.<sup>45</sup> In addition, several commenters reiterate arguments raised prior to the release of the *2014 Anda Commission Order* and argue that the Commission does not have authority to waive its regulations in private litigation and that doing so violates the separation of powers.<sup>46</sup> In response to these arguments, petitioners assert that they should not be held to a higher standard than initial waiver recipients – evidence of actual, subjective confusion is not required.<sup>47</sup> They further respond by asserting that nothing in the record demonstrates that they knew they were required to comply with the requirement but failed to do so.<sup>48</sup> Petitioners also argue that their petitions should not be

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4; HomeoPet Petition at 5-6; Cochran Petition at 2, 6; NAB Petition at 7-8; Cartridge Petition at 4, 6; Biolase Petition at 6; Del City Petition at 6; Schwabe Petition at 6.

<sup>41</sup> See *Consumer and Governmental Affairs Bureau Seeks Comment on Petitions Concerning the Commission's Rule on Opt-Out Notices on Fax Advertisements*, CG Docket Nos. 02-278, 05-338, Public Notice, DA 15-381 (rel. Dec. 4, 2015); *Consumer and Governmental Affairs Bureau Seeks Comment on Petitions Concerning the Commission's Rule on Opt-Out Notices on Fax Advertisements*, CG Docket Nos. 02-278, 05-338, Public Notice, DA 16-102 (rel. Jan. 29, 2016); *Consumer and Governmental Affairs Bureau Seeks Comment on Petitions Concerning the Commission's Rule on Opt-Out Notices on Fax Advertisements*, CG Docket Nos. 02-278, 05-338, Public Notice, DA 16-317 (rel. Mar. 25, 2016); *Consumer and Governmental Affairs Bureau Seeks Comment on Petitions Concerning the Commission's Rule on Opt-Out Notices on Fax Advertisements*, CG Docket Nos. 02-278, 05-338, Public Notice, DA 16-470 (rel. Apr. 29, 2016); *Consumer and Governmental Affairs Bureau Seeks Comment on Petitions Concerning the Commission's Rule on Opt-Out Notices on Fax Advertisements*, CG Docket Nos. 02-278, 05-338, Public Notice, DA 16-598 (rel. May 31, 2016); *Consumer and Governmental Affairs Bureau Seeks Comment on Petitions Concerning the Commission's Rule on Opt-Out Notices on Fax Advertisements*, CG Docket Nos. 02-278, 05-338, Public Notice, DA 16-751 (rel. July 1, 2016); *Consumer and Governmental Affairs Bureau Seeks Comment on Petitions Concerning the Commission's Rule on Opt-Out Notices on Fax Advertisements*, CG Docket Nos. 02-278, 05-338, Public Notice, DA 16-976 (rel. Aug. 26, 2016); *Consumer and Governmental Affairs Bureau Seeks Comment on Petitions Concerning the Commission's Rule on Opt-Out Notices on Fax Advertisements*, CG Docket Nos. 02-278, 05-338, Public Notice, DA 16-1113 (rel. Sept. 30, 2016).

<sup>42</sup> A list of commenters can be found in Appendix A.

<sup>43</sup> See Carradine Comments at 2, 8-9; Brouillette Comments at 1, 3; JWD Comments at 9-10; Cin-Q Comments at 14, 26-27; West Loop Comments at 1, 4; Shulruff Comments at 1.

<sup>44</sup> See Fauley Comments at 1, 9; Brouillette Comments at 3-4; Yaakov Comments at 10, 14-15; West Loop Comments at 3, 4; Shulruff Comments at 3; see also Cin-Q Comments at 24-25 (asserting that the presumption of confusion has been rebutted).

<sup>45</sup> See Brodsky Comments at 1-2, 11-12, 14; Yaakov Comments at 2, 4; JWD Comments at 2, 5, 6-7; Condon Comments at 3; Cin-Q Comments at 13, 14; St. Louis Comments at 4-7; West Loop Comments at 4; Whiteamire Comments at 4.

<sup>46</sup> See Fauley Comments at 1, 4-8; Brodsky Comments at 13; Yaakov Comments at 6-8, 9; JWD Comments at 2, 3; Cin-Q Comments at 14; St. Louis Comments at 2, 3-4; Whiteamire Comments at 1-2, 3. In its comments, Bais Yaakov also asserts that a grant of waiver constitutes a legislative rule which, in this case, lacks Congressional authority. See Yaakov Comments at 10.

<sup>47</sup> See Virbac Reply Comments at 5-6; Posture Pro Reply Comments at 2, 3; ETS Reply Comments at 10; see also CSI Petition at 5; Del City Petition at 5, 7.

<sup>48</sup> See Virbac Reply Comments at 3; Petplan Reply Comments at i, LKN Reply Comments at 2, 4; Buccaneers Reply Comments at 13-15.

denied simply because they were filed after April 30, 2015. Specifically, petitioners assert that the Commission has refused to reject petitions solely on the basis of being filed after April 30, 2015,<sup>49</sup> that the April 2015 date was not a filing deadline,<sup>50</sup> and/or that their petitions were timely filed based on the circumstances.<sup>51</sup>

### III. DISCUSSION

#### A. Requests for Waiver

11. In this Order, we grant waivers to Virbac Corporation, Weinberg & Associates, Inc., Humana Insurance Company, Humana Inc., Humana Dental Insurance Company, Humana Health Plan, Inc., CompBenefits Insurance Company, CompBenefits Dental, Inc., American Dental Plan of North Carolina, Inc., the Dental Concern, LTD, and Golden West Dental and Vision, Posture Pro, Inc., LKN Communications, Inc. d/b/a CAN, Inc., Educational Testing Service, Inter-Med, Inc. d/b/a Vista Dental Products, Legal & General America, Inc., Jeana Fleitz, LLC d/b/a The X-Ray Lady, C. Specialties, Inc., Buccaneers Limited Partnership, Warner Chilcott Corporation, Wedgewood Village Pharmacy, Inc., Roche Diagnostics Corporation and Roche Diabetes Care, Inc., Amatheon, Inc., HomeoPet, LLC, Synchrony Bank d/b/a CareCredit and Synchrony Financial, Cochran Wholesale Pharmaceutical, Inc., North American Bancard, LLC, Biolase, Inc., Power Products LLC d/b/a Del City Wire Co., Inc., and Schwabe North America, Incorporated, Nature's Way Brands, LLC, Integrative Brands, LLC, and Enzymatic Therapy, LLC as they have demonstrated that they are similarly situated to the parties granted relief by the Commission in the *2014 Anda Commission Order*. Specifically, we find good cause exists to grant individual retroactive waivers of section 64.1200(a)(4)(iv) of the Commission's rules to the extent described below. We emphasize that these waivers provide relief through April 30, 2015. Any non-compliant faxes (*i.e.*, faxes that do not include the required opt-out information) sent after that date are subject to Commission enforcement and TCPA liability.

12. We find that good cause exists to grant a retroactive waiver to 22 of the 26 petitioners.<sup>52</sup> For the reasons discussed below, we find that the public interest is better served by granting limited retroactive waivers. At the outset, we dismiss arguments that granting waivers while litigation is pending violates the separation of powers, as one commenter has suggested.<sup>53</sup> As the Commission has previously noted, by addressing requests for declaratory ruling and/or waiver, we are interpreting and implementing a statute, the TCPA, over which Congress provided the Commission authority as the expert agency.<sup>54</sup>

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<sup>49</sup> See ETS Reply Comments at 2; LGA Reply Comments at 3-4; Buccaneers Reply Comments at 10; Biolase Petition at 3, 4.

<sup>50</sup> See Buccaneers Petition at 3; Buccaneers Reply Comments at 11; Warner Reply Comments at 4, 5; Biolase Petition at 3.

<sup>51</sup> See ETS Reply Comments at 3-4; LGA Reply Comments at 2, 3-4; Warner Reply Comments at 6.

<sup>52</sup> See *supra* n.3.

<sup>53</sup> See Yaakov Comments at 9.

<sup>54</sup> See 47 U.S.C. § 227(b)(2) ("The Commission shall prescribe regulations to implement the requirements of this subsection."); 47 CFR § 1.2; see also *NCTA v. Brand X*, 545 U.S. 967, 980 (2005) ("Congress has delegated to the Commission the authority to 'execute and enforce' the Communications Act, . . . and to 'prescribe such rules and regulations as may be necessary in the public interest to carry out the provisions' of the Act.") (citations omitted); *id.* at 983-84 ("[W]hether Congress has delegated to an agency the authority to interpret a statute does not depend on the order in which the judicial and administrative constructions occur. . . . Instead, the agency may . . . choose a different construction [than the court], since the agency remains the authoritative interpreter (within the limits of reason) of such statutes."); *2014 Anda Commission Order*, 29 FCC Rcd at 14008, para. 21.

Likewise, the mere fact that the TCPA allows for private rights of action to enforce rule violations<sup>55</sup> does not undercut the Commission's authority, as the expert agency, to define the scope of when and how its rules apply.<sup>56</sup>

13. The Commission may waive its rules for good cause shown.<sup>57</sup> A waiver may be granted if: (1) special circumstances warrant a deviation from the general rule and (2) the waiver would better serve the public interest than would strict application of the rule.<sup>58</sup> The Commission previously found that special circumstances warranted deviation from the general rule at issue here. Specifically, the Commission found two reasons for confusion or misplaced confidence among affected parties that the opt-out notice rule did not apply to fax ads sent with recipient consent: (1) inconsistency between a *Junk Fax Order* footnote and the rule, and (2) the notice provided prior to the rule, even though legally sufficient, did not make explicit that the Commission contemplated an opt-out requirement on fax ads sent with the prior express permission of the recipient.<sup>59</sup> We find that the 22 petitioners here have adequately demonstrated that they are similarly situated<sup>60</sup> to the initial waiver recipients and warrant a limited retroactive waiver for fax ads sent with recipients' prior express consent or permission prior to April 30, 2015.

14. As commenters observe, the Commission granted waivers to petitioners where no record evidence demonstrates that they understood that they did, in fact, have to comply with the opt-out notice requirement for fax ads sent with prior express permission but nonetheless failed to do so<sup>61</sup> and where the petitioners referenced the confusion because of the inconsistency between the footnote in the *Junk Fax Order* and the text of the *Order*, as well as the rule itself.<sup>62</sup> We find that the 22 petitioners are similarly situated and thus qualify for waivers: (1) the faxes at issue were sent prior to the compliance deadline of April 30, 2015 established in the *2014 Anda Commission Order*;<sup>63</sup> (2) petitioners assert their general lack of understanding that the rule in question applied to solicited faxes and/or refer to the confusion caused by

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<sup>55</sup> See 47 U.S.C. § 227(b)(3).

<sup>56</sup> See, e.g., 47 U.S.C. § 227(b)(2); *Northeast Cellular v. FCC*, 897 F.2d 1164 (D.C. Cir. 1990) (*Northeast Cellular*) ("The FCC has authority to waive its rules if there is 'good cause' to do so. 47 CFR § 1.3. The FCC may exercise its discretion to waive a rule where particular facts would make strict compliance inconsistent with the public interest.").

<sup>57</sup> See 47 CFR § 1.3; *WAIT Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969); *appeal after remand*, 459 F.2d 1203 (D.C. Cir. 1972), *cert. denied*, 409 U.S. 1027 (1972); *Northeast Cellular*, 897 F.2d at 1166.

<sup>58</sup> See *Northeast Cellular*, 897 F.2d at 1166.

<sup>59</sup> See *2014 Anda Commission Order*, 29 FCC Rcd at 14009-10, paras. 24-26.

<sup>60</sup> See, e.g., *supra* at n.38. In so doing, petitioners assert that there was industry-wide confusion resulting from the *Junk Fax Order* footnote and the rule. See *supra* at n.40. In addition, petitioners allege that the faxes at issue were sent with the prior express consent or permission of the recipients. See *supra* at n.39.

<sup>61</sup> See, e.g., Virbac Reply Comments at n.24; LKN Reply Comments at 2, 4; Buccaneers Reply Comments at 13-15.

<sup>62</sup> See, e.g., LKN Reply Comments at 4; ETS Reply Comments at 10; Buccaneers Reply Comments at 13.

<sup>63</sup> See Virbac Petition at 1, 4; Weinberg Petition at 4; Humana Petition at 1, 5; Posture Pro Petition at 1, 6; LKN Petition at 1; ETS Petition at 1, 2; Inter-Med Petition at 1; LGA Petition at 1, 3; Fleitz Petition at 1; CSI Petition at 2; Buccaneers Petition at 1; Warner Petition at 2; Wedgewood Petition at 3; Roche Petition at 1; Amatheon Petition at 1, 4; HomeoPet Petition at 1, 4; Synchrony Petition at 5; Cochran Petition at 1; NAB Petition at 1-3, 7; Cartridge Petition at 6; Biolase Petition at 1, 4; Del City Petition at 8.



the inconsistency between the text of the *Junk Fax Order* and the erroneous footnote,<sup>64</sup> and (3) no record evidence rebuts the presumption of confusion or misplaced confidence.<sup>65</sup>

15. All 22 petitions reference the contradictory language in the Commission's *Junk Fax Order*, thus qualifying them for the presumption of confusion or misplaced confidence articulated by the Commission. Of these 22 petitions, eight are not opposed by commenters. Regarding the remaining petitions, opponents argue that petitioners are not similarly situated to the prior waiver recipients. More specifically, opponents assert the following: petitioners did not actually get consent;<sup>66</sup> petitioners have not argued actual confusion;<sup>67</sup> and petitions were untimely filed.<sup>68</sup> We address each argument in turn and find that none merit denying the requested waivers.

16. First, we decline to conduct a factual analysis to determine whether the petitioners actually obtained consent. We reiterate the Commission's statement that the granting of a waiver does not confirm or deny that the petitioners had the prior express permission of the recipients to send the faxes.<sup>69</sup> That remains a question for triers of fact in the private litigation.

17. Second, we reject arguments that the Commission made actual, specific claims of confusion a requirement to obtain a waiver. The Commission did not require petitioners to plead specific, detailed grounds for individual confusion, and we do not impose such a requirement now. The petitioners asserted their general confusion regarding the opt-out notice requirement for solicited faxes, and there is no evidence in the record demonstrating that petitioners understood they were required to comply but failed to do so.

18. Finally, we decline to reject petitions solely on the basis that they were filed after April 30, 2015. We observe that all of the petitions resolved by this Order were filed after the six-month date (April 30, 2015) referenced in the *2014 Anda Commission Order*. We examined these petitions, as we did each petition filed, independently. These petitions sought waiver for faxes sent prior to the April 30, 2015 compliance deadline imposed by the *2014 Anda Commission Order*. As such, granting waivers to

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<sup>64</sup> See *See Virbac* Petition at 2; *Virbac* Reply Comments at 6; *Weinberg* Petition at 4; *Humana* Petition at 4-5; *Posture Pro* Petition at 3-4, 6; *Posture Pro* Reply Comments at 4; *LKN* Petition at 2-3; *ETS* Petition at 3-4, 7; *ETS* Reply Comments at 9; *Inter-Med* Petition at 3, 4; *LGA* Petition at 4-5, 6; *LGA* Reply Comments at 2; *Fleitz* Petition at 2-4; *CSI* Petition at 1-2, 4, 7; *Warner* Petition at 1-2, 4, 5-6, 7; *Wedgewood* Petition at 4, 6; *Amatheon* Petition at 3, 4; *HomeoPet* Petition at 5-6; *Cochran* Petition at 2, 6; *NAB* Petition at 7-8; *Cartridge* Petition at 4, 6; *Biolase* Petition at 6, *Del City* Petition at 2, 6; *Schwabe* Petition at 6-7.

<sup>65</sup> *Cin-Q* asserts that the *Buccaneers* understood that opt-out notices were required on all fax advertisements and it has, therefore, refuted the presumption in the case of the *Buccaneers* Petition. See *Cin-Q* Comments at 24-25. *Buccaneers* respond that the deposition testimony relied on by *Cin-Q* was taken out of context and does not prove that it was aware of the requirement for opt-out notices on solicited faxes. *Buccaneer* Reply Comments at 16. The *Buccaneers* reiterate that it "did not, in fact, understand that it had to comply with the Opt-out Requirement for solicited faxes. The same confusion that gripped the industry about the Opt-out Requirement, afflicted BLP." *Buccaneers* Reply Comments at 14.

<sup>66</sup> See e.g. *Carradine* Comments at 2, 8-9; *Brouillette* Comments at 1, 3; *JWD* Comments at 9-10; *Cin-Q* Comments at 14, 26-27; *West Loop* Comments at 3; *Shulruff* at 1.

<sup>67</sup> See e.g., *Fauley* Comments at 1, 9; *Brouillette* Comments at 3-4; *Yaakov* Comments at 10, 14-15; *Shulruff* at 3; see also *Cin-Q* Comments at 24-25.

<sup>68</sup> See e.g., *Brodsky* Comments at 1-2, 11-12, 14; *Yaakov* Comments at 2, 4; *JWD* Comments at 2, 5, 6-7; *Condon* Comments at 3; *Cin-Q* Comments at 13, 14; *St. Louis* Comments at 4-7; *West Loop* Comments at 4; *Whiteamire* at 1-2, 3.

<sup>69</sup> See *2014 Anda Commission Order*, 29 FCC Rcd at 14012, para. 31.

the 22 petitioners here does not contradict the purpose or intent of the initial waiver order because these parties are similarly situated to the initial waiver recipients.<sup>70</sup>

19. We emphasize that full compliance with the requirement to provide an opt-out notice on fax ads sent with the prior express permission of the recipient is expected now that any potential for confusion on this point has been addressed and interested parties have been given additional notice of this requirement. We reiterate that the waivers granted herein apply to the petitioners only insofar as they may have failed to comply with section 64.1200(a)(4)(iv) prior to April 30, 2015. As a result, the waivers granted herein shall not apply to conduct occurring after April 30, 2015, nor shall they apply to any situation other than where the fax sender had obtained the prior express invitation or permission of the recipient to receive the fax advertisement. We also emphasize that these waivers do not affect the prohibition against sending unsolicited fax ads, which has remained in effect since its original effective date.<sup>71</sup> Nor should the granting of such waivers be construed in any way to confirm or deny that these petitioners, in fact, had the prior express permission of the recipients to be sent the faxes at issue in the private litigation.<sup>72</sup>

20. Next, we grant in part and deny in part Amsterdam Printing & Litho, Inc.'s petition for waiver. In its petition, Amsterdam seeks a waiver "from any past obligation to provide the opt-out" notice on solicited faxes.<sup>73</sup> This petition is denied with respect to any noncompliant fax (*i.e.*, faxes that do not include the required opt-out information) sent after April 30, 2015. Insofar as the petitioner has demonstrated it is similarly situated to the initial waiver recipients, the Amsterdam Petition is granted with respect to faxes sent with the recipients' prior express permission or consent on or before April 30, 2015. Any noncompliant faxes sent after that date are subject to Commission enforcement and TCPA liability.

21. We deny the petitions for waiver filed by Fetch, Inc. d/b/a Petplan, Azcomp Technologies, Inc., and Cartridge World North America, LLC on the grounds that petitioners are not similarly situated to the initial waiver recipients. These petitioners admit a lack of awareness of the TCPA and/or Commission rules requiring them to include opt-out notices on faxes sent to recipients who provided prior express permission or consent.<sup>74</sup> The *2014 Anda Commission Order* made clear that

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<sup>70</sup> Several commenters refer to April 30, 2015 as a filing deadline and cite *In the Matter of The Atlanta Channel, Inc.*, 27 FCC Rcd 14541 (2012) (*Atlanta Channel*) to support their contention that petitioners' failure to file waiver petitions on or before that date without any explanation for delay or proof of hardship is grounds for their denial. See Brodsky Comments at 14; Cin-Q Comments at 15; JWD Comments at 4; St. Louis Comments at 4. The facts and circumstances of *Atlanta Channel* are clearly distinguishable to this Order. The *Atlanta Channel* matter involved a statutorily required filing deadline. The applicant sought review of the denial of its late-filed application. No such filing deadline exists in this circumstance. Commenters are mistaken in treating the April 30, 2015 date as a firm filing deadline. The Commission requested that parties "make every effort" to file by that date. See *2014 Anda Commission Order*, 29 FCC Rcd at 14012, ¶ 30. The only deadline imposed by the *2014 Anda Commission Order* is a deadline for compliance with the regulation. None of the waiver petitions granted in this Order involve faxes that were sent beyond the April 30, 2015 compliance deadline.

<sup>71</sup> See 47 CFR § 64.1200(a)(4).

<sup>72</sup> The record indicates that the question of whether some of the petitioners had acquired prior express permission of the recipient remains a source of dispute between the parties. See, *e.g.*, Carradine Comments at 2, 8-9; Brouillette Comments at 3; JWD Comments at 2, 9-10; Cin-Q Comments at 14, 26-27; West Loop Comments at 1, 3, 4; Shulruff Comments at 1.

<sup>73</sup> Amsterdam Petition at 1, 3.

<sup>74</sup> See Petplan Petition at 7 ("[p]rior to learning of the instant lawsuit [filed Oct. 23, 2015]. . . Petitioner did not have any understanding that opt-out notices were required on solicited faxes"); Azcomp Petition at 8 ("AZCOMP did not learn of the existence of the Order, or of the opportunity to seek a retroactive waiver, or of the April 30,

(continued...)

ignorance of the law would not constitute grounds for a waiver.<sup>75</sup> Because these three parties admit their ignorance of the law, we deny the petitions consistent with Commission precedent.

22. Finally, we deny three related requests for declaratory ruling<sup>76</sup> insofar as they seek 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. We reiterate the Commission's previous denial of requests seeking a declaratory ruling that the Commission lacked the statutory authority to require opt-out information on fax ads sent with recipient consent, or, alternatively, that section 227 of the Act was not the statutory basis of that requirement. The Commission concluded that such requests present no controversy to terminate or uncertainty to remove because "[t]he Commission clearly relied upon its section 227 authority in promulgating the opt-out notification requirement."<sup>77</sup>

#### IV. ORDERING CLAUSES

23. Accordingly, IT IS ORDERED that, pursuant to sections 4(i), 4(j), and 227 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), (j), 227, and section 1.3 of the Commission's rules, 47 CFR § 1.3, and the authority delegated in sections 0.141 and 0.361 of the rules, 47 CFR §§ 0.141, 0.361, the petitions for retroactive waiver of section 64.1200(b)(1) of the Commission's rules, 47 CFR § 64.1200(b)(1), filed by Virbac Corporation, Weinberg & Associates, Inc., Humana Insurance Company, Humana Inc., Humana Dental Insurance Company, Humana Health Plan, Inc., CompBenefits Insurance Company, CompBenefits Dental, Inc., American Dental Plan of North Carolina, Inc., the Dental Concern, LTD, and Golden West Dental and Vision, Posture Pro, Inc., LKN Communications, Inc. d/b/a CAN, Inc., Educational Testing Service, Inter-Med, Inc. d/b/a Vista Dental Products, Legal & General America, Inc., Jeana Fleitz, LLC d/b/a The X-Ray Lady, C. Specialties, Inc., Buccaneers Limited Partnership, Warner Chilcott Corporation, Wedgewood Village Pharmacy, Inc., Roche Diagnostics Corporation and Roche Diabetes Care, Inc., Amatheon, Inc., HomeoPet, LLC, Synchrony Bank d/b/a CareCredit and Synchrony Financial, Cochran Wholesale Pharmaceutical, Inc., North American Bancard, LLC, Biolase, Inc., Power Products LLC d/b/a Del City Wire Co., Inc., and Schwabe North America, Incorporated, Nature's Way Brands, LLC, Integrative Brands, LLC, and Enzymatic Therapy, LLC in CG Docket Nos. 02-278 and 05-338 ARE GRANTED insofar as they may have failed to comply with the opt-out notice requirement for fax advertisements sent with the prior express invitation or permission of the recipient prior to **April 30, 2015**. Full compliance with this rule is required by these parties from that date forward.

(Continued from previous page) \_\_\_\_\_  
2015 deadline, until it was sued"); see also Azcomp Petition at 7-8 ("after being made aware of the [Oct. 30, 2014] Order (by virtue of being sued in the [Nov. 4, 2015] Lawsuit), AZCOMP immediately took steps to ensure that all of its fax communications contain the exact same opt-out notices as that required by the Regulation"); Whiteamire Comments at 8 (quoting Cartridge World's Response to Plaintiffs' Interrogatory no. 11, in which Cartridge World admitted that it was unaware of the Junk Fax Prevention Act prior to sending its noncompliant fax advertisements).

<sup>75</sup> See *2014 Anda Commission Order*, 29 FCC Rcd at 14010, para. 26 ("simple ignorance of the TCPA or the Commission's attendant regulations is not grounds for waiver").

<sup>76</sup> See ETS Petition; CSI Petition; Warner Petition.

<sup>77</sup> See *2014 Anda Commission Order*, 29 FCC Rcd at 14006, para. 18; see also *Junk Fax Order*, 21 FCC Rcd at 3788, para. 1 ("In this Order, we amend the Commission's rules on unsolicited facsimile advertisements as required by the Junk Fax Prevention Act of 2005 (the Junk Fax Prevention Act)."); *id.* at 3817, para. 64.

24. IT IS FURTHER ORDERED THAT the petitions for retroactive waiver of the Commission's rule 47 CFR § 64.1200(a)(4)(iv) filed by Amsterdam Printing and Litho, Inc. IS GRANTED IN PART and DENIED IN PART to the extent discussed herein.

25. IT IS FURTHER ORDERED THAT the petitions for retroactive waiver of the Commission's rule 47 CFR § 64.1200(a)(4)(iv) filed by Fetch, Inc. d/b/a Petplan, Azcomp Technologies, Inc., and Cartridge World North America, LLC ARE DENIED to the extent discussed herein.

26. IT IS FURTHER ORDERED, that the requests for declaratory ruling filed by Educational Testing Service, C. Specialties, Inc., and Warner Chilcott Corporation in CG Docket Nos. 02-278 and 05-338 ARE DENIED to the extent discussed herein.

FEDERAL COMMUNICATIONS COMMISSION

Alison Kutler  
Chief  
Consumer and Governmental Affairs Bureau

## APPENDIX A

## List of Commenters

The following parties have filed comments in response to the various Public Notices issued in this matter (CG Docket Nos. 02-278; 05-338):

<u>Commenter</u>	<u>Petition(s)</u>	<u>Abbreviation</u>
<b>Azcomp Technologies, Inc.</b>	Azcomp Petition	Azcomp
Bais Yaakov of Spring Valley	ETS Petition	Yaakov
Brodsky, Lawrence S. and JT Frames, Inc.	Humana Petition, Weinberg Petition	Brodsky
Brouillette, David L., D.C., S.C.	LKN Petition	Brouillette
<b>Buccaneers Limited Partnership</b>	Buccaneers Petition	Buccaneers
Carradine Chiropractic Center, Inc.	Posture Pro Petition	Carradine
Cin-Q Automobiles, Inc. and Medical & Chiropractic Clinic, Inc.	Buccaneers Petition	Cin-Q
Condon, Timothy	Buccaneers Petition	Condon
Cortez Foot & Ankle Specialists	Buccaners Petition	Cortez
<b>Educational Testing Service</b>	ETS Petition	ETS
Fauley, Shaun	Virbac Petition, Petplan Petition	Fauley
Fauley, Shaun, JWD Automotive, Inc., and Russell M. Holstein, PhD, LLC	CSI Petition, LGA Petition	JWD
<b>Fetch, Inc. d/b/a Petplan</b>	Petplan Petition	Petplan
<b>Legal &amp; General America, Inc.</b>	LGA Petition	LGA
<b>LKN Communications, Inc., d/b/a ACN, Inc.</b>	LKN Petition	LKN
Phyllis J. Towzey, P.A.	Buccaneers Petition	Towzey
<b>Posture Pro, Inc.</b>	Posture Pro Petition	Posture Pro
Shulruff, Charles, DDS	Biolase Petition	Shulruff
St. Louis Heart Center, Inc. and Shaun Fauley	Warner Petition, Wedgewood Petition	St. Louis
<b>Virbac Corporation</b>	Virbac Petition	Virbac
<b>Warner Chilcott Corporation</b>	Warner Petition	Warner



West Loop Chiropractic & Sports Injury Center, Ltd. and West Loop Health & Sports Performance Center, LLC	NAB Petition	West Loop
Whiteamire Clinic, P.A., Inc., Big Thyme Enterprises, Inc., and Career Counseling, Inc.	Cartridge Petition, Schwabe Petition, Amsterdam Petition	Whiteamire

\*filing both comments and reply comments (bold – reply comments only)