

7 SEP 2011 RCUD

Congress of the United States

Washington, DC 20515

August 31, 2011

CCB
TCPA

1242

The Honorable Julius Genachowski
Chairman
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Dear Chairman Genachowski:

We write to urge the Federal Communications Commission (Commission) to take action on a Petition for Declaratory Ruling filed by Anda, Inc., on November 30, 2010. The Petition concerns Commission rules, which require fax advertisements sent with the prior express consent of the recipient to include the same detailed opt-out notice required for unsolicited fax advertisements. The Petition asks the Commission to identify the statutory basis for that notice requirement and has been languishing for eight months without any Commission action.

Due to the lack of statutory citation by the Commission, a number of class-action lawsuits have been filed and threaten to impose massive liability on legitimate businesses that are simply communicating with customers in the method that the *customer* has requested.

The Commission's imposition of an opt-out notice requirement for *solicited* faxes appears to depart from Congress's intent in enacting the Junk Fax Prevention Act of 2005 (JFPA). The JFPA expressly restored businesses' ability to send fax advertisements based on an established business relationship (EBR). The JFPA required that in cases of an EBR, the sender include a detailed opt-out notice, allowing the recipient's wishes regarding further fax communication to be clearly known. In contrast, there was no reason to extend the opt-out notice requirement to fax advertisements sent *with the recipient's express consent*, and the JFPA nowhere imposes such a requirement. Where recipients have made their wishes known by expressly opting *in* to receiving such faxes, that business or individual need not be told how to opt *out*.

In an economic environment where businesses are struggling to regain their footing and to raise the capital needed for new investment and job creation, they should not be subject to potentially crippling class action lawsuits simply because the FCC failed to clarify the statutory basis for requiring opt-out notices on solicited faxes. The longer this confusion about the rule's legal basis persists, the more pervasive these debilitating lawsuits will become—exposing legitimate advertisers to massive unintended damages.

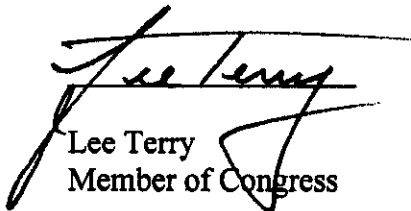
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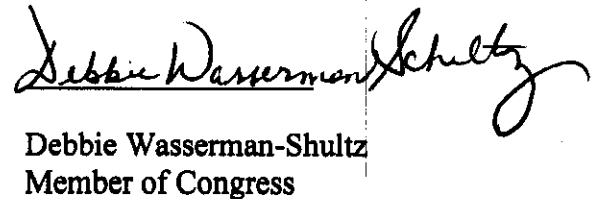
The Commission should carefully consider the Petition and, if needed, open a proceeding to clarify the rule's legal basis, so that legitimate businesses are not subject to debilitating lawsuits that Congress never intended to authorize.

Please provide a response by September 9, 2011 that advises us of your timeline for addressing the Petition and whether you intend to seek public comment to facilitate development of a more complete record on this matter. We look forward to your response.

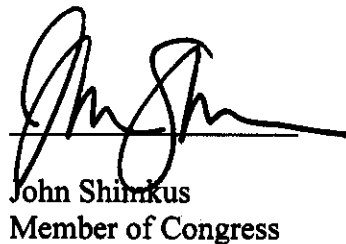
Sincerely,



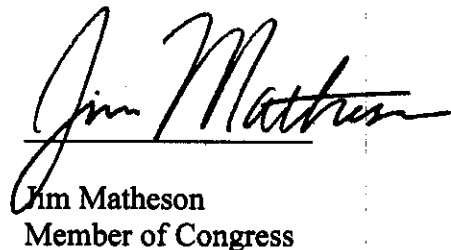
Lee Terry
Member of Congress



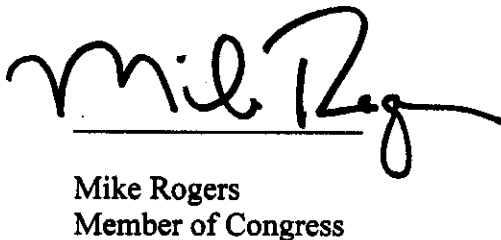
Debbie Wasserman-Schultz
Member of Congress



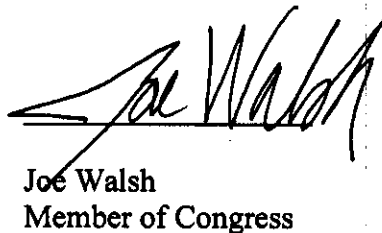
John Shimkus
Member of Congress



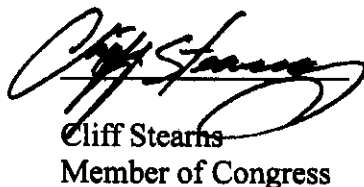
Jim Matheson
Member of Congress



Mike Rogers
Member of Congress



Joe Walsh
Member of Congress



Cliff Stearns
Member of Congress