

(i) Idaho Code (I.C.) containing the General Laws of Idaho Annotated, Title 39, Chapter 44, "Hazardous Waste Management", published in 2002 by the Michie Company, Law Publishers: sections 39-4404; 39-4405 (except 39-4405(8)); 39-4406; 39-4407; 39-4408(4); 39-4409(2) (except first sentence); 39-4409(3); 39-4409(4) (first sentence); 39-4410; 39-4411(1); 39-4411(3); 39-4411(6); 39-4412 through 39-4416; 39-4418; 39-4419; 39-4421; 39-4422; and 39-4423(3) (a)&(b).

(ii) Idaho Code (I.C.) containing the General Laws of Idaho Annotated, Title 39, Chapter 58, "Hazardous Waste Facility Siting Act", published in 2002 by the Michie Company, Law Publishers: sections 39-5804; 39-5809; 39-5810; 39-5813(2); 39-5814; 39-5816; 39-5817; and 39-5818(1).

(iii) Idaho Code (I.C.) containing the General Laws of Idaho Annotated, Volume 2, Title 9, Chapter 3, "Public Writings", published in 1990 by the Michie Company, Law Publishers, Charlottesville, Virginia: sections 9-337(10); 9-337(11); 9-338; 9-339; and 9-344(2).

(iv) 2002 Cumulative Pocket Supplement to the Idaho Code (I.C.), Volume 2, Title 9, Chapter 3, "Public Writing", published in 2002 by the Michie Company, Law Publishers, Charlottesville, Virginia: sections 9-340A, 9-340B, and 9-343.

(v) Idaho Department of Environmental Quality Rules and Regulations, Idaho Administrative Code, IDAPA 58, Title 1, Chapter 5, "Rules and Standards for Hazardous Waste", as published July 2004: sections 58.01.05.000; 58.01.05.356.02 through 58.01.05.356.05; 58.01.05.800; 58.01.05.850; 58.01.05.996; 58.01.05.997; and 58.01.05.999.

(3) The following statutory and regulatory provisions are broader in scope than the Federal program, are not part of the authorized program, are not incorporated by reference, and are not federally enforceable:

(i) Idaho Code containing the General Laws of Idaho Annotated, Title 39, Chapter 44, "Hazardous Waste Management", published in 2002 by the Michie Company, Law Publishers: sections 39-4403(6) & (14); 39-4427; 39-4428 and 39-4429.

(ii) Idaho Code containing the General Laws of Idaho Annotated, Title 39, Chapter 58, "Hazardous Waste Siting Act", published in 2002 by the Michie Company, Law Publishers: section 39-5813(3).

(iii) Idaho Department of Environmental Quality Rules and Regulations, Idaho Administrative Code, IDAPA 58, Title 1, Chapter 5, "Rules

and Standards for Hazardous Waste", as published July 2004: sections 58.01.05.355; and 58.01.05.500.

(4) *Memorandum of Agreement*. The Memorandum of Agreement between EPA Region 10 and the State of Idaho (IDEQ), signed by the EPA Regional Administrator on August 1, 2001, although not incorporated by reference, is referenced as part of the authorized hazardous waste management program under subtitle C of RCRA, 42 U.S.C. 6921, *et seq.*

(5) *Statement of Legal Authority*. The "Attorney General's Statement for Final Authorization," signed by the Attorney General of Idaho on July 5, 1988 and revisions, supplements and addenda to that Statement, dated July 3, 1989, February 13, 1992, December 29, 1994, September 16, 1996, October 3, 1997, April 6, 2001, September 11, 2002, and September 22, 2004, although not incorporated by reference, are referenced as part of the authorized hazardous waste management program under subtitle C of RCRA, 42 U.S.C. 6921, *et seq.*

(6) *Program Description*. The Program Description, and any other materials submitted as part of the original application or as supplements thereto, although not incorporated by reference, are referenced as part of the authorized hazardous waste management program under subtitle C of RCRA, 42 U.S.C. 6921 *et seq.*

3. Appendix A to part 272, State Requirements, is amended by revising the listing for "Idaho" to read as follows:

Appendix A to Part 272—State Requirements

* * * * *

Idaho

(a) The statutory provisions include: Idaho Code containing the General Laws of Idaho Annotated, Title 39, Chapter 44, "Hazardous Waste Management", 2002: sections 39-4402; 39-4403 (except 39-4403(6) & (14)); 39-4408(1)-(3); 39-4409(1) (except fourth and fifth sentences); 39-4409(2) (first sentence); 39-4409(4) (except first sentence); 39-4409(5); 39-4409(6); 39-4409(7); 39-4409(8); 39-4411(2); 39-4411(4); 39-4411(5); 39-4423 (except 39-4423(3)(a) & (b)); and 39-4424.

Idaho Code containing the General Laws of Idaho Annotated, Title 39, Chapter 58, "Hazardous Waste Facility Siting Act", published in 2002 by the Michie Company, Law Publishers: sections 39-5802; 39-5803; 39-5808; 39-5811; 39-5813(1); and 39-5818(2).

Copies of the Idaho statutes that are incorporated by reference are available from Michie Company, Law Publishers, 1 Town Hall Square, Charlottesville, VA 22906-7587.

(b) The regulatory provisions include:

Idaho Department of Environmental Quality Rules and Regulations, Idaho Administrative Code, IDAPA 58, Title 1, Chapter 5, "Rules and Standards for Hazardous Waste", as published on July 2004: sections 58.01.05.001; 58.01.05.002; 58.01.05.003; 58.01.05.004; 58.01.05.005; 58.01.05.006; 58.01.05.007; 58.01.05.008; 58.01.05.009; 58.01.05.010; 58.01.05.011; 58.01.05.012; 58.01.05.013; 58.01.05.014; 58.01.05.015; 58.01.05.016; 58.01.05.356.01; and 58.01.05.998.

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CG Docket No. 02-278; CG Docket No. 05-338; FCC 05-206]

Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Junk Fax Prevention Act of 2005 amends section 227 of the Communications Act of 1934 relating to unsolicited facsimile advertisements. The Junk Fax Prevention Act requires the Commission to issue regulations to implement the amendments made by the statute no later than 270 days after the date of enactment of the Act. In this document, the Commission proposes amendments to its unsolicited facsimile advertising rules and seeks comment on related aspects of those rules. Specifically, the Commission seeks comment on the established business relationship (EBR) exception to the rules, the requirement to include an opt-out notice and contact information on facsimile advertisements, and other rules implementing the Junk Fax Prevention Act. The Commission also opens a new docket for all filings in response to this document and those addressing the facsimile advertising rules generally.

DATES: Comments due January 18, 2006. Reply comments due February 2, 2006. Written comments on the Paperwork Reduction Act (PRA) proposed information collection requirements must be submitted by the general public, Office of Management and Budget (OMB), and other interested parties on or before February 17, 2006.

ADDRESSES: You may submit comments, identified by CG Docket No. 05-338, by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

- Federal Communications Commission's Web site: <http://www.fcc.gov/cgb/ecfs/>. Follow the instructions for submitting comments.

- People with Disabilities: Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by e-mail: FCC504@fcc.gov or phone (202) 418-0539 or TTY: (202) 418-0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document. In addition, a copy of any comments on the Paperwork Reduction Act (PRA) information collection requirements contained herein should be submitted to Leslie Smith, Federal Communications Commission, Room 1-A804, 445 12th Street, SW., Washington, DC 20554, or via the Internet to Leslie.Smith@fcc.gov, and to Kristy L. LaLonde, OMB Desk Officer, Room 10234 NEOB, 725 17th Street, NW., Washington, DC 20503, via the Internet to Kristy_L._LaLonde@omb.eop.gov, or via fax at (202) 395-5167.

FOR FURTHER INFORMATION CONTACT: Erica McMahon or Richard Smith, Consumer & Governmental Affairs Bureau, (202) 418-2512. For additional information concerning the Paperwork Reduction Act information collection requirements contained in this document, contact Les Smith at (202) 418-0217, or via the Internet at Leslie.Smith@fcc.gov.

SUPPLEMENTARY INFORMATION: This *Notice of Proposed Rulemaking (NPRM)*, CG Docket No. 02-278, FCC 05-206, contains proposed information collection requirements subject to the PRA, Public Law 104-13. It will be submitted to the Office of Management and Budget (OMB) for review under section 3507 of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the proposed information collection requirements contained in this proceeding. This is a summary of the Commission's *NPRM*, FCC 05-206, adopted December 9, 2005, and released December 9, 2005 in CG Docket No. 02-278 and CG Docket No. 05-338. The Commission also opens a new docket—CG Docket No. 05-338—for all filings in response to this document and those addressing the facsimile advertising rules generally. In addition, this *NPRM* is associated with an *Order*, FCC 05-206, adopted December 9, 2005,

released December 9, 2005, addressing the delayed effective date of the written consent requirement for sending facsimile advertisements. The Final rule is published elsewhere in this issue of the **Federal Register**.

Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415 and 1.419, interested parties may file comments on January 18, 2006 and reply comments on February 2, 2006. Comments may be filed using: (1) The Commission's Electronic Comment Filing System (ECFS); (2) the Federal Government's eRulemaking Portal; or (3) or by filing paper copies. See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121, May 1, 1998.

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <http://www.fcc.gov/cgb/ecfs/> or the Federal eRulemaking Portal: <http://www.regulations.gov>. Filers should follow the instructions provided on the Web site for submitting comments.

- For ECFS filers, although multiple docket numbers appear in the caption of this proceeding, filers should transmit one electronic copy of the comments for CG Docket No. 05-338 only. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number, which in this instance is CG Docket No. 05-338. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to ecfs@fcc.gov, and include the following words in the body of the message, "get form." A sample form and directions will be sent in response.

- Paper Filers: Parties who choose to file by paper must file an original and four copies of each filing in CG Docket No. 05-338. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although the Commission continues to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of *before* entering the building.

- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

- U.S. Postal Service first-class, Express, and Priority mail should be addressed to 445 12th Street, SW., Washington, DC 20554.

Comments and reply comments must include a short and concise summary of the substantive discussion and questions raised in the *NPRM*. The Commission further directs all interested parties to include the name of the filing party and the date of the filing on each page of their comments and reply comments. The Commission strongly encourages that parties track the organization set forth in the *NPRM* in order to facilitate the Commission's internal review process. Comments and reply comments must otherwise comply with § 1.48 of the Commission's rules and all other applicable sections of the Commission's rules. (See 47 CFR 1.48).

Pursuant to § 1.1200 of the Commission's rules, 47 CFR 1.1200, this matter shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules. Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substances of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. See 47 CFR 1.1206(b). Other rules pertaining to oral and written *ex parte* presentations in permit-but-disclose proceedings are set forth in § 1.1206(b) of the Commission's rules, 47 CFR 1.1206(b).

To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY).

Initial Paperwork Reduction Act of 1995 Analysis

This *NPRM* contains proposed information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this *NPRM*, as required by the Paperwork Reduction Act of 1995, Public Law 104-13. Public and agency comments are due February 17, 2006.

Comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. 3506(c)(4), the Commission seeks specific comment on how the Commission might "further reduce the information collection burden for small business concerns with fewer than 25 employees."

OMB Control Number: 3060-XXXX.

Title: Rules and Regulations Implementing the Junk Fax Prevention Act of 2005.

Form Number: N/A.

Type of Review: New Collection.

Respondents: Individuals or households; Business and other for-profit entities; and Not-for-profit institutions.

Number of Respondents: 5,000,000—(4 million facsimile advertisement senders and 1,000,000 complainants).

Number of Responses: 5,150,000 responses.

Estimated Time per Response: 15 seconds to 1 hour.

Frequency of Responses: On occasion reporting requirement; monthly recordkeeping; third party.

Total Annual Burden: 13,170,000 hours.

Total Annual Cost: \$60,000,000.

Privacy Impact Assessment: Yes.

Needs and Uses: On December 9, 2005, the Commission released a *Notice of Proposed Rulemaking, Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991 (NPRM)*, which proposes modifications to the Commission's rules on unsolicited facsimile advertisements and seeks comment on related aspects of those rules, pursuant to the Junk Fax Prevention Act. The Commission is considering the adoption of rules governing the transmission of facsimile advertisements. Because the facsimile advertising rules involve different issues and different entities than do the telemarketing rules under the Telephone Consumer Protection Act (TCPA), the Commission believes that it will be easier for the public if the burden hours associated with the facsimile advertising rules are identified

in a separate information collection. Therefore, the Commission is initiating a new collection for the proposed facsimile advertising rules described below:

(1) The Junk Fax Prevention Act requires senders of unsolicited facsimile advertisements to include a notice on the first page of the facsimile that informs the recipient of the ability and means to request that they not receive future unsolicited facsimile advertisements from the sender. The NPRM must include a domestic contact telephone and facsimile machine number for the recipient to transmit such a request to the sender, as well as a cost-free mechanism for a recipient to transmit a request pursuant to such notice to the sender of the unsolicited advertisement. The telephone and facsimile numbers and cost-free mechanism must permit an individual or business to make such a request at any time on any day of the week. The Commission proposes amending the Commission's rules to require entities to comply with the specific notice requirements in the Junk Fax Prevention Act. The Commission also asks whether a 30-day limitation is the shortest reasonable period in which a sender should comply with a request not to receive future facsimile advertisements.

(2) In addition, the Junk Fax Prevention Act provides that, if a sender relies on an EBR for permission to fax an advertisement, the sender must have obtained the number of the telephone facsimile machine through the voluntary communication of such number, within the context of such EBR or through a directory, advertisement, or site on the Internet to which the recipient voluntarily agreed to make available its facsimile number. This provision does not apply in the case of an advertisement sent based on an established business relationship with the recipient that was in existence before the date of enactment of the Junk Fax Prevention Act (July 9, 2005). The Commission seeks comment on whether to require the sender to make reasonable efforts to confirm with the entity that compiled the numbers that the recipients have voluntarily agreed to allow them to be made publicly available. The Commission also proposes amending the rules, consistent with the Junk Fax Prevention Act, to permit senders to send facsimile advertisements to persons with whom an EBR was formed prior to July 9, 2005, provided the facsimile number was in the sender's possession before July 9, 2005, as well. While there is no ongoing reporting requirement associated with this proposed rule, if a complaint is

filed involving the existence of an EBR or the duration of the EBR, the facsimile sender may need to obtain and provide records kept in the usual course of business evidencing the duration of the EBR.

(3) Finally the Commission seeks comment on situations in which a consumer that has made a do-not-fax request of a sender subsequently provides express invitation or permission to receive facsimile advertisements from that entity. Specifically, the Commission asks whether the facsimile sender should bear the burden of proof to demonstrate that it had the consumer's express invitation or permission to send the advertisement. Again, while there is no ongoing recordkeeping or reporting requirement associated with this proposed rule, if a complaint is filed, the facsimile sender may need to obtain and provide records demonstrating that express invitation or permission was subsequently provided by the recipient.

Synopsis

The Junk Fax Prevention Act of 2005 (the Junk Fax Prevention Act) amends the provisions of section 227 of the Communications Act of 1934 (the Act) relating to unsolicited facsimile advertisements. As required by the Junk Fax Prevention Act, the Commission proposes modifications to the Commission's rules on unsolicited facsimile advertisements and seeks comment on related aspects of those rules. The Junk Fax Prevention Act was signed into law on July 9, 2005. Section 2(h) of the Junk Fax Prevention Act provides that "not later than 270 days after the date of enactment of this Act, the Federal Communications Commission shall issue regulations to implement the amendments made by this section." Therefore, the Commission must issue regulations to implement these amendments no later than April 5, 2006.

Recognition of an Established Business Relationship Exemption

Background

Section 2(a) of the Junk Fax Prevention Act amends section 227(b)(1)(C) of the Act by adding an established business relationship (EBR) exemption to the prohibition on sending unsolicited facsimile advertisements. Specifically, section 2(a) provides that it shall be unlawful for any person within the United States or any person outside the United States if the recipient is within the United States:

(C) To use any telephone facsimile machine, computer, or other device to

send, to a telephone facsimile machine, an unsolicited advertisement, unless—

(i) The unsolicited advertisement is from a sender with an established business relationship with the recipient;

(ii) The sender obtained the number of the telephone facsimile machine through—

(I) The voluntary communication of such number, within the context of such established business relationship, from the recipient of the unsolicited advertisement, or

(II) A directory, advertisement, or site on the Internet to which the recipient voluntarily agreed to make available its facsimile number for public distribution, except that this clause shall not apply in the case of an unsolicited advertisement that is sent based on an established business relationship with the recipient that was in existence before the date of enactment of the Junk Fax Prevention Act of 2005 if the sender possessed the facsimile machine number of the recipient before such date of enactment; and

(iii) The unsolicited advertisement contains a notice meeting the requirements under paragraph (2)(D), except that the exception under clause (i) and (ii) shall not apply with respect to an unsolicited advertisement sent to a telephone facsimile machine by a sender to whom a request has been made not to send future unsolicited advertisements to such telephone facsimile machine that complies with the requirements under paragraph (2)(E).

Discussion

The Commission proposes amending § 64.1200(a)(3) of the Commission's rules in accordance with the specific requirements in section 2(a) of the Junk Fax Prevention Act regarding the express recognition of an EBR exemption. Specifically, the Commission proposes removing § 64.1200(a)(3)(i) of the Commission's rules which provides that a facsimile advertisement is unsolicited unless "the recipient has granted the sender prior express invitation or permission to deliver the advertisement, as evidenced by a signed, written statement that * * * clearly indicates the recipient's consent to receive such facsimile advertisements from the sender." Congress has concluded that an unsolicited advertisement from a sender with an EBR to the recipient will not be governed by the general prohibition found in section 227(b)(1)(C) of the Act. As discussed further below, in the context of an EBR, such prior express permission may be formed by means

other than a signed, written statement that indicates the recipient's consent to receive facsimile advertisements. The Commission seeks comment on these and any other issues that commenters may consider pertinent to this topic.

In addition, the Commission seeks specific comment on whether the Commission should establish parameters defining what it means for a person to provide a facsimile number "within the context of [an] established business relationship." Under what circumstances should the Commission recognize that a person has voluntarily agreed to make a facsimile number available for public distribution? Should the burden rest with the sender to establish that the recipient has agreed to make the number publicly available? When the sender obtains the facsimile number from a directory, advertisement, or site on the Internet, should the sender be required to make reasonable efforts to confirm with the entity that compiled the numbers that the recipients have "voluntarily" agreed to allow them to be made publicly available?

Finally, the Junk Fax Prevention Act provides an exception from the requirement that any sender transmitting a facsimile advertisement on the basis of an EBR must have obtained the facsimile number through the "voluntary communication of such number, within the context of such established business relationship" or through "a directory, advertisement, or site on the Internet to which the recipient voluntarily agreed to make available its facsimile number for public distribution." Under the statute, if the EBR was in existence prior to the date of enactment of the statute and the sender also possessed the facsimile number before the date of enactment of the statute, the sender is not required to demonstrate how it obtained the facsimile number. The Commission proposes amending the Commission's rules consistent with this exception, which would permit senders to send facsimile advertisements to persons with whom an EBR was formed prior to July 9, 2005, provided the facsimile number was in the sender's possession before July 9, 2005, as well. If the Commission adopts this proposal, how should the Commission verify that a sender had an EBR and the recipient's facsimile number prior to July 9, 2005? The Commission seeks comment on this proposal and any other issues that relate to the sender's ability to send facsimile advertisements to persons with whom an EBR was formed prior to enactment of the Junk Fax Prevention Act.

Definition of Established Business Relationship

Background

Section 2(b) of the Junk Fax Prevention Act—Definition of Established Business Relationship—amends section 227(a) of the Act by providing a definition of an EBR to be used in the context of unsolicited facsimile advertisements. Specifically, section 2(b) adds the following language:

(2) The term 'established business relationship', for purposes only of subsection (b)(1)(C)(i) [creating an EBR exemption for unsolicited facsimile advertisements] shall have the meaning given the term in section 64.1200 of title 47, Code of Federal Regulations, as in effect on January 1, 2003, except that—

(A) Such term shall include a relationship between a person or entity and a business subscriber subject to the same terms applicable under such section to a relationship between a person or entity and a residential subscriber; and

(B) An established business relationship shall be subject to any time limitation established pursuant to paragraph (2)(G).

Paragraph 2(G)" refers to Section 2(f) of the Junk Fax Prevention Act. That provision authorizes the Commission to limit the duration of the EBR in the context of unsolicited facsimile advertisements. Specifically, Section 2(f) provides that the Commission:

(G)(i) May, consistent with clause (ii), limit the duration of the existence of an established business relationship, however, before establishing any such limits, the Commission shall—

(I) Determine whether the existence of the exception under paragraph

(1)(C) Relating to an established business relationship has resulted in a significant number of complaints to the Commission regarding the sending of unsolicited advertisements to telephone facsimile machines;

(II) Determine whether a significant number of any such complaints involve unsolicited advertisements that were sent on the basis of an established business relationship that was longer in duration than the Commission believes is consistent with the reasonable expectations of consumers;

(III) Evaluate the costs to senders of demonstrating the existence of an established business relationship within a specified period of time and the benefits to recipients of establishing a limitation on such established business relationship; and

(IV) Determine whether with respect to small businesses, the costs would not be unduly burdensome; and

(ii) May not commence a proceeding to determine whether to limit the duration of

the existence of an established business relationship before the expiration of the 3-month period that begins on the date of the enactment of the Junk Fax Prevention Act of 2005.

Discussion

As contemplated by section 2(b) of the statute, the Commission seeks comment on whether to incorporate into the Commission's facsimile advertising rules the following definition of an EBR:

For purposes of paragraph (a)(3) of this section, the term established business relationship means a prior or existing relationship formed by a voluntary two-way communication between a person or entity and a business or residential subscriber with or without an exchange of consideration, on the basis of an inquiry, application, purchase or transaction by the business or residential subscriber regarding products or services offered by such person or entity, which relationship has not been previously terminated by either party.

The Commission notes that this proposed EBR definition differs from the definition of an EBR in the Commission's rules for telephone solicitations in that it expressly extends the exemption to faxes sent to *both* business and residential subscribers, rather than just residential subscribers. This is consistent with the fact that the prohibition on sending unsolicited facsimile advertisements, unlike telephone solicitations, applies to both businesses and residential subscribers.

The Junk Fax Prevention Act authorizes the Commission, after a period of three months from the date of enactment of the Act, to consider limits on the duration of an EBR. Therefore, the Commission takes this opportunity to seek comment on whether to limit the EBR as applied to unsolicited facsimile advertisements. As part of the Commission's review, and as required by the statute, the Commission will evaluate the Commission's complaint data to determine whether the EBR exception has resulted in a significant number of complaints regarding facsimile advertisements, and whether such complaints involve facsimile advertisements sent based on an EBR of a duration that is inconsistent with the reasonable expectations of consumers.

In the context of telephone solicitations, Congress has concluded that the right to call consumers becomes more tenuous over time. *See* House of Representatives Report Number 102-317, page 14. Consistent with the conclusion of the Federal Trade Commission, this Commission has limited the duration of the EBR for telephone solicitations to 18 months following a purchase or transaction and three months after an application or

inquiry. The Commission concluded that this 18/3-month limitation on the duration of an EBR strikes an appropriate balance between industry practices and consumers' privacy interests. Accordingly, the Commission seeks comment on whether it is appropriate to limit the EBR duration for unsolicited facsimile advertisements in the same manner as telephone solicitations. To the extent that commenters suggest EBR durations for facsimile advertisements that may vary from those imposed on telephone solicitations, including not adopting any limitation on the duration of the facsimile EBR, the Commission seeks empirical evidence to distinguish the Commission's findings relating to the EBR duration for telephone solicitations.

In addition, as set forth in the Junk Fax Prevention Act, the Commission seeks comment on the benefits to facsimile recipients of limits on the EBR. Are there direct costs to consumers associated with receiving facsimile advertisements, such as costs for paper, toner, and time spent collecting and sorting faxes that weighs in favor of limiting the facsimile EBR? Are there direct benefits to consumers of having an EBR that is not limited in duration? If the Commission adopts any such limits on the EBR, the Commission also asks commenters to describe the costs to senders of demonstrating the existence of an EBR that is limited in duration. Would these costs be overly burdensome, particularly for small businesses?

Notice of Opt-Out Opportunity

Background

Section 2(c) of the Junk Fax Prevention Act—Required Notice of Opt-Out Opportunity—amends section 227(b)(2) of the Act by adding language that requires senders of unsolicited facsimile advertisements to include a notice on the first page of the facsimile that informs the recipient of the ability and means to request that they not receive future unsolicited facsimile advertisements from the sender. Specifically, section 2(c) requires that the Commission:

(D) Shall provide that a notice contained in an unsolicited advertisement complies with the requirements under this subparagraph only if—

(i) The notice is clear and conspicuous and on the first page of the unsolicited advertisement;

(ii) The notice states that the recipient may make a request to the sender of the unsolicited advertisement not to send any future unsolicited advertisements to a telephone facsimile machine or machines

and that failure to comply, within the shortest reasonable time, as determined by the Commission, with such a request meeting the requirements under subparagraph (E) [setting forth the circumstances under which a request to opt-out complies with the Act] is unlawful;

(iii) The notice sets forth the requirements for a request under subparagraph (E);

(iv) The notice includes—

(I) A domestic contact telephone and facsimile machine number for the recipient to transmit such a request to the sender; and

(II) A cost-free mechanism for a recipient to transmit a request pursuant to such notice to the sender of the unsolicited advertisement; the Commission shall by rule require the sender to provide such a mechanism and may, in the discretion of the Commission and subject to such conditions as the Commission may prescribe, exempt certain classes of small business senders, but only if the Commission determines that the costs to such class are unduly burdensome given the revenues generated by such small businesses;

(v) The telephone and facsimile machine numbers and cost-free mechanism set forth pursuant to clause (iv) permit an individual or business to make such a request at any time on any day of the week; and

(vi) The notice complies with the requirements of subsection (d).

Discussion

The Commission proposes amending the Commission's rules to comply with the specific notice requirements on unsolicited facsimile advertisements as set forth by Congress in section 2 of the Junk Fax Prevention Act. In addition, the Commission seeks comment on whether it is necessary to set forth in our rules under what circumstances a notice will be considered "clear and conspicuous." If so, the Commission asks commenters to describe those circumstances under which a notice should be considered "clear and conspicuous." As directed by Congress, the Commission also seeks comment on the "shortest reasonable time" within which a sender of unsolicited facsimile advertisements must comply with a request not to receive future facsimile advertisements from the sender. The Commission notes that the Commission's rules require that persons or entities making calls for telemarketing purposes must honor a do-not-call request within a reasonable time. The Commission's rules provide that this reasonable period "may not exceed thirty days from the date of such request." The Commission seeks comment on whether this 30-day limitation is the shortest reasonable period in which to expect senders of unsolicited facsimile advertisements to honor a do-not-fax request. If not, the Commission seeks empirical evidence

from commenters to support proposals for longer or shorter periods.

The Commission notes that the Commission's rules currently require senders of facsimile messages to identify themselves on the message, along with the telephone number of the sending machine or the business, other entity, or individual sending the message. The Commission therefore seeks comment on the interplay between this identification requirement and the notice requirement described above for senders of unsolicited facsimile advertisements. The Commission seeks comment on ways to minimize the burdens associated with complying with these separate requirements that are consistent with the goals of the TCPA and its recent amendments.

As provided by the Junk Fax Prevention Act, the Commission also seeks comment on whether to exempt certain classes of small business senders from the requirement to provide a cost-free mechanism for a recipient to transmit a request not to receive future facsimile advertisements. In particular, the Commission seeks empirical information as to whether the costs to such small businesses are unduly burdensome given the revenues generated by such small businesses. Should the Commission decide to exempt certain classes of small businesses from the requirement, the Commission seeks specific information on how such "classes" of small businesses may be defined. Do the Small Business Administration's Standard Industrial Classification regulations provide any useful guidance? Are there any legal impediments to adopting a definition of small business or class of small businesses for use in this context that may deviate from the SBA's standard definition? Does the Junk Fax Prevention Act provide sufficient authority to allow the Commission to adopt a small business classification that varies from the SBA? Would such an exemption for small business senders have any adverse impact on consumers and businesses who receive facsimile advertisements from small businesses? Are there alternative mechanisms available so that recipients are able to request of any small business that it not send future unsolicited advertisements?

In addition, the Commission seeks comment on whether the Commission needs to enumerate specific "cost-free" mechanisms for a recipient to transmit a do-not-fax request, and, if so, the Commission seeks comment on what those specific mechanisms should be. For instance, should the provision of a toll-free telephone number, website, or

email address for receiving do-not-fax requests, comply with this requirement? Should a local telephone number be considered a "cost-free" mechanism if the unsolicited facsimile advertisements are sent only to local consumers? The Commission seeks comment on these issues and any other issues commenters may consider pertinent to this topic.

Request to Opt-Out of Future Unsolicited Advertisements

Background

Section 2(d) of the Junk Prevention Act—Request to Opt-Out of Future Unsolicited Advertisements—amends section 227(b)(2) of the Act by adding language that sets forth when a request not to send future unsolicited facsimile advertisements complies with the Act. Specifically, section 2(d) states that the Commission:

(E) Shall provide, by rule, that a request not to send future unsolicited advertisements to a telephone facsimile machine complies with the requirements under this subparagraph only if—

(i) The request identifies the telephone number or numbers of the telephone facsimile machine or machines to which the request relates;

(ii) The request is made to the telephone or facsimile number of the sender of such an unsolicited advertisement provided pursuant to subparagraph (D)(iv) or by any other method of communication as determined by the Commission; and

(iii) The person making the request has not, subsequent to such request, provided express invitation or permission to the sender, in writing or otherwise, to send such advertisements to such person at such telephone facsimile machine.

Discussion

The Commission proposes adopting the requirements provided in the Junk Fax Prevention Act regarding the making of a request not to receive future unsolicited facsimile advertisements. Section 2(a) of the Junk Fax Prevention Act provides that "the exception under clauses (i) and (ii) [creating the EBR exemption] shall not apply with respect to an unsolicited advertisement sent to a telephone facsimile machine by a sender to whom a request has been made not to send future unsolicited advertisements to such telephone facsimile machine* * *." The Commission seeks comment on whether the Commission's rules should reflect that a do-not-fax request terminates the EBR exemption with the sender of the facsimile even if the recipient continues to do business with the sender. The Commission seeks comment on whether to specify that if the sender of the facsimile advertisement is a third party agent or fax broadcaster that any do-not-

fax request sent to that sender will extend to the underlying business on whose behalf the fax is transmitted. The Commission also seeks comment on whether there are any other methods of communication that the Commission should prescribe for making a do-not-fax request other than those required in the notice section discussed above (*i.e.*, a domestic contact telephone and facsimile number and a cost-free mechanism). Should, for instance, a sender be required to honor a request made by mail or e-mail even if such addresses are not necessarily provided by the sender in the facsimile communication's "opt-out" notice? Finally, the Commission seeks comment on situations in which a consumer that has made a do-not-fax request of a sender subsequently provides express invitation or permission to receive facsimile advertisements from that entity. Should the facsimile sender bear the burden of proof to demonstrate that it had the consumer's express invitation or permission to send the facsimile advertisement?

Authority To Establish Nonprofit Exception

Background

Section 2(e) of the Junk Fax Prevention Act—Authority to Establish Nonprofit Exemption—amends section 227(b)(2) of the Act by adding language that authorizes the Commission to consider exempting nonprofit organizations from the notice requirements discussed above. Specifically, section 2(e) provides that the Commission:

(F) May, in the discretion of the Commission and subject to such conditions as the Commission may prescribe, allow professional or trade associations that are tax-exempt nonprofit organizations to send unsolicited advertisements to their members in furtherance of the association's tax-exempt purpose that do not contain the notice required by paragraph (1)(C)(iii), except that the Commission may take action under this subparagraph only—

(i) By regulation issued after public comment; and

(ii) If the Commission determines that such notice required by paragraph (1)(C)(iii) is not necessary to protect the ability of the members of such associations to stop such associations from sending any future unsolicited advertisements[.]

Discussion

The Commission seeks comment on whether the Commission should allow professional or trade associations that are tax-exempt nonprofit organizations to send unsolicited advertisements to their members in furtherance of the associations' tax-exempt purpose that

do not contain the “opt-out” notice required by the Junk Fax Prevention Act. In particular, the Commission seeks comment on whether such notice is necessary to protect the ability of members of such associations to stop the sending of any future unsolicited advertisements. For example, how will members of such associations obtain the necessary information to opt-out if associations are not required to provide such information? What benefits, if any, are there to nonprofit organizations if the Commission exempts them from this requirement? How should the Commission determine whether an unsolicited advertisement is sent “in furtherance of the association’s tax-exempt purpose?” The Commission seeks comment on these issues and any other issues commenters may consider pertinent to this topic.

Unsolicited Advertisement

Background

Section 2(g) of the Junk Fax Prevention Act—Unsolicited Advertisement—amends section 227(a)(5) of the Act which defines the term “unsolicited advertisement” by adding “in writing or otherwise” before the period at the end of that section.

Discussion

The Commission proposes amending the definition of unsolicited advertisement in § 64.1200(f)(10) of the Commission’s rules to read as follows:

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.

In addition, the Commission seeks comment on the phrase “prior express invitation or permission” in the definition. In addition to written permission, what other forms of permission should be allowed by our rules? If permission is given orally, for instance, should the facsimile sender bear the burden of proof to demonstrate that it had the consumer’s prior express invitation or permission?

Other Issues: Creation of CG Docket No. 05–338

In this *NPRM*, the Commission opens a new docket—CG Docket No. 05–338. All filings in response to this *NPRM* and those addressing the Commission’s facsimile advertising rules generally, should be filed in CG Docket No. 05–338. Although the Commission urges parties that previously filed in CG Docket No. 02–278 on the facsimile

advertising rules to re-file in new CG Docket No. 05–338, such filings nevertheless will be considered in this proceeding. Therefore, the Commission incorporates by reference comments filed in CG Docket No. 02–278 that are responsive to the issues raised in this proceeding. The existing TCPA docket, CG Docket 02–278, will remain open for other TCPA-related filings.

Initial Regulatory Flexibility Analysis

As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in this Notice of Proposed Rulemaking (*NPRM*). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by January 18, 2006. The Commission will send a copy of the *NPRM*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the *NPRM* and IRFA (or summaries thereof) will be published in the **Federal Register**.

A. Need for, and Objectives of, the Proposed Rules

On July 9, 2005, the Junk Fax Prevention Act was signed into law amending the provisions of section 227 of the Communications Act. The Junk Fax Prevention Act codifies an established business relationship exemption to the provision which prohibits the sending of unsolicited facsimile advertisements. It also requires the sender of a facsimile advertisement to provide specified notice and contact information on the facsimile that allows recipients to “opt-out” of any future facsimile transmissions from the sender. It also requires the Commission to issue regulations to implement the amendments within 270 days of the date of enactment of the statute. Therefore, the proposed rules are necessary to comply with this congressional mandate and to provide additional guidance to regulated entities that must comply with the federal statute. The proposed modifications to the Commission’s existing rules are necessary if they are to be consistent with the amendments made by the Junk Fax Prevention Act.

In this *NPRM*, the Commission proposes a number of modifications to the Commission’s rules on unsolicited facsimile advertisements. The Commission proposes amending § 64.1200(a)(3) of the Commission’s

rules to expressly recognize an established business relationship (EBR) exemption. The Commission also proposes removing § 64.1200(a)(3)(i) of the Commission’s rules which provides that a facsimile advertisement is unsolicited unless the recipient has granted the sender prior express invitation or permission to deliver the advertisement, as evidenced by a signed, written statement that clearly indicates the recipient’s consent to receive such facsimile advertisements from the sender. The Commission also proposes amending the Commission’s rules to permit senders to send facsimile advertisements to persons with whom an established business relationship was formed prior to July 9, 2005, provided the facsimile number was in the sender’s possession before July 9, 2005. In addition, the Commission proposes incorporating into our rules the definition of “established business relationship” that applied to telephone solicitations and was in effect on January 1, 2003. The Commission also seeks comment on whether to limit the duration of the EBR as applied to facsimile advertising.

The Junk Fax Prevention Act requires senders of unsolicited facsimile advertisements to include a notice on the first page of the facsimile that informs the recipient of the ability and means to request that they not receive future unsolicited facsimile advertisements from the sender. Therefore, the Commission proposes amending the Commission’s rules consistent with these specific notice requirements and clarifying under what circumstances a notice will be considered “clear and conspicuous.” Additionally, the Commission proposes defining the “shortest reasonable time” within which a sender of unsolicited facsimile advertisements must comply with a request not to receive future facsimile advertisements from the sender. The Commission also proposes adopting the requirements provided in the Junk Fax Prevention Act regarding the making of a request not to receive future unsolicited facsimile advertisements. The request would need to identify the numbers of the telephone facsimile machine or machines and be made to the sender of the advertisement.

As contemplated by the Junk Fax Prevention Act, the proposed rules also address the ability of professional or trade associations that are tax-exempt nonprofit organizations to send to their members unsolicited advertisements in furtherance of the association’s tax-exempt purpose that do not contain the “opt-out” notice required by the statute. In addition, the proposed rules address

the ability of small business senders to provide "cost-free" mechanisms for recipients to transmit opt-out requests. Finally, the Commission proposes amending the definition of "unsolicited advertisement" so that it is consistent with the definition in the Junk Fax Prevention Act.

B. Legal Basis

The proposed action is authorized under sections 1–4, 227 and 303(r) of the Communications Act of 1934, as amended; 47 U.S.C. 151–154 and 227, and the Junk Fax Prevention Act of 2005, Public Law Number 109–21, 119 Statute 359.

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

The Commission's rules on the sending of unsolicited facsimile advertisements would apply to any entity, including any telecommunications carrier, that uses the telephone facsimile machine to advertise. Thus, the Commission expects that the proposals in this NPRM could have a significant economic impact on a substantial number of small entities, including the following:

Interexchange Carriers. Neither the Commission nor the SBA has developed a specific size standard for small entities specifically applicable to providers of interexchange services. The closest applicable size standard under the SBA rules is for Wired Telecommunications Carriers. Under that standard, such a business is small if it has 1,500 or fewer employees. According to the FCC's *Telephone Trends Report* data, 281 carriers reported that their primary telecommunications service activity was the provision of interexchange services. Of these 281 carriers, an estimated 254 have 1,500 or fewer employees, and 27 have more than 1,500 employees. Consequently, the Commission estimates that a majority of

interexchange carriers may be affected by the rules.

Incumbent Local Exchange Carriers. Neither the Commission nor the SBA has developed a small business size standard for providers of incumbent local exchange services. The closest applicable size standard under the SBA rules is for Wired Telecommunications Carriers. Under that standard, such a business is small if it has 1,500 or fewer employees. According to the FCC's *Telephone Trends Report* data, 1,310 incumbent local exchange carriers reported that they were engaged in the provision of local exchange services. Of these 1,310 carriers, an estimated 1,025 have 1,500 or fewer employees and 285 have more than 1,500 employees. Consequently, the Commission estimates that the majority of providers of local exchange service are small entities that may be affected by the rules and policies adopted herein.

Wireless Service Providers. The SBA has developed a small business size standard for wireless firms within the two broad economic census categories of "Paging" and "Cellular and Other Wireless Telecommunications." Under both SBA categories, a wireless business is small if it has 1,500 or fewer employees. For the census category of Paging, Census Bureau data for 1997 show that there were 1,320 firms in this category, total, that operated for the entire year. Of this total, 1,303 firms had employment of 999 or fewer employees, and an additional 17 firms had employment of 1,000 employees or more. Thus, under this category and associated small business size standard, the great majority of firms can be considered small. For the census category Cellular and Other Wireless Telecommunications, Census Bureau data for 1997 show that there were 977 firms in this category, total, that operated for the entire year. Of this total, 965 firms had employment of 999 or fewer employees, and an additional 12 firms had employment of 1,000 employees or more. Thus, under this second category and size standard, the great majority of firms can, again, be considered small.

Ordinarily, the Commission does not seek comment on the entities that must comply with proposed rules. However, the proposed rules in this document potentially could apply to any entity, including any telecommunications carrier, that sends an unsolicited advertisement to a telephone facsimile machine. Thus, under these unusual circumstances, the Commission seeks comment on whether the approximately 4.44 million small business firms in the United States, as identified in SBA data,

will need to comply with these rules, or whether it is reasonable to assume that only a subset of them will be subject to these rules given that not all small businesses use the facsimile machine for advertising purposes. After evaluating the comments, the Commission will examine further the effect any rule changes might have on small entities not named herein, and will set forth our findings in the final Regulatory Flexibility Analysis.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

The NPRM seeks comment on a number of rule changes that will affect reporting, recordkeeping and other compliance requirements for entities sending unsolicited facsimile advertisements. The proposed rules will apply to all entities using telephone facsimile machines to send unsolicited advertisements. If the Commission adopts an EBR exemption to the prohibition on sending unsolicited facsimile advertisements, many entities that send such messages only to their EBR customers will not be required to obtain separate permission from recipients, thereby potentially minimizing some of the compliance requirements. However, in the event a question arises about the existence of an EBR or the duration of the EBR, the sender might need to maintain records evidencing the EBR and when the EBR was formed. Such records might also need to demonstrate whether or not the facsimile number was in the sender's possession before date of enactment of the Junk Fax Prevention Act. Because the Commission determined in 1992 that an EBR could evidence permission to send a facsimile advertisement, the Commission believes most senders of facsimile advertisements currently maintain these records and will not be required to take any new action to comply with the proposed rules.

In addition, the NPRM proposes adopting the specific notice requirements on unsolicited facsimile advertisements set forth in section 2 of the Junk Fax Prevention Act. As mandated by the Junk Fax Prevention Act, senders of unsolicited advertisements must include a notice on the first page of the facsimile that informs the recipient of the ability and means to request that they not receive future unsolicited advertisements from the sender. Under the Junk Fax Prevention Act, the notice must be on the first page of the advertisement; be clear and conspicuous; include a domestic contact telephone and facsimile machine number for the

recipient to transmit an opt-out request to the sender; and provide a cost-free mechanism for a recipient to transmit a request pursuant to such notice to the sender of the advertisement. Finally, the telephone and facsimile machine numbers and cost-free mechanism must permit an individual or business to make such a request at any time on any day of the week. Should the Commission adopt the notice requirements in the Junk Fax Prevention Act, senders would need to take steps to ensure that their facsimile advertisements contained the notice and that such notice meets any specific criteria as outlined above. In addition, senders of facsimile advertisements must implement a cost-free mechanism, if they do not already have one in place, to allow recipients of such messages to request not to receive future advertisements.

The *NPRM* also seeks comment on the “shortest reasonable time” within which a sender of facsimile advertisements must comply with a request not to receive future facsimile advertisements from the sender. If the Commission adopts a 30-day limitation, or an alternative time period, within which senders of unsolicited facsimile advertisements must honor a do-not-fax request, entities subject to the rules would need to make sure to utilize some recordkeeping system to ensure that such requests are honored within 30 days or an alternative period of time. Finally, should the Commission require the fax sender to bear the burden of proof to demonstrate that a consumer provided express invitation or permission to receive a facsimile advertisement after the consumer had previously made a do-not-fax request, the sender would likely need to maintain some record of that permission.

E. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

In proposing rules to implement the Junk Fax Prevention Act, the Commission also considers alternatives that potentially could minimize the burdens on, or simplify compliance requirements for, small businesses. First, the Commission considers exempting certain classes of small business senders from the requirement to provide a cost-free mechanism for a recipient to transmit a request not to receive future facsimile advertisements. In considering this alternative, the Commission will evaluate the costs to such small businesses of providing the cost-free mechanism and whether such costs are unduly burdensome given the revenues generated by small businesses. The Commission also compares and evaluates alternative “cost-free” mechanisms that businesses might utilize to minimize burdens on small businesses, but still allow recipients to request of any small business that it not send future facsimile advertisements. Finally, in determining whether to limit the duration of the EBR, the Commission will consider the costs to small businesses of demonstrating the existence of a limited EBR.

In addition, the Commission considers exempting certain nonprofit organizations from the notice requirements in the Junk Fax Prevention Act. This alternative proposal will allow professional or trade associations that are tax-exempt nonprofit organizations to send unsolicited advertisements to their members in furtherance of the associations’ tax-exempt purpose that do not contain the “opt-out” notice required by the Junk Fax Prevention Act. Should the Commission determine that such notice is not necessary to protect the ability of members of such associations to stop the sending of any future unsolicited advertisements, this alternative approach could minimize compliance burdens on those professional and trade associations that are small businesses.

As described above, the Junk Fax Prevention Act requires that senders of facsimile advertisements include notices stating that the recipients may request not to receive any future unsolicited facsimile advertisements. The Commission is considering alternative time periods within which a sender of unsolicited facsimile advertisements must comply with a request not to receive future facsimile advertisements from the sender. The Commission will compare and evaluate these alternative time periods to ensure that they are the “shortest reasonable time periods” within which senders can comply with the rules and that they are

not overly burdensome to small businesses.

F. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rule

The Commission’s proposal in this *NPRM* to expressly recognize an EBR exemption to the prohibition on sending unsolicited facsimile advertisements appears to conflict with § 64.1200(a)(3)(i) of the Commission’s existing rules. Therefore, this *NPRM* proposes revising or removing § 64.1200(a)(3)(i) of the Commission’s rules, which provides that a facsimile advertisement is unsolicited unless “the recipient has granted the sender prior express invitation or permission to deliver the advertisement, as evidenced by a signed, written statement that * * * clearly indicates the recipient’s consent to receive such facsimile advertisements from the sender.”

Ordering Clauses

Pursuant to the authority contained in 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); the Junk Fax Prevention Act of 2005, and § 64.1200 of the Commission’s rules, 47 CFR 64.1200, 64.2401, this *Notice of Proposed Rulemaking* in CG Docket 02–278 is adopted.

CG Docket No. 05–338 *shall be* created for this proceeding and for other issues related to the Commission’s facsimile advertising rules.

The Commission’s Consumer & Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of the *Notice of Proposed Rulemaking*, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission.

Marlene H. Dortch,
Secretary.

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