

FCC Seeking Comment on Waivers for Solicited Faxes Sent Without Opt-Out Notices

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As we reported earlier this year, the Federal Communication Commission recently clarified that all fax advertisements – both solicited and unsolicited – must include an opt-out notice. The clarification came in response to advertisers’ confusion surrounding the FCC’s 2006 Junk Fax Order. The FCC indicated that an opt-out notice is required in a fax ad even if someone agreed to receive the fax advertisement. As part of its ruling, the FCC elected to grant a retroactive waiver of the rule to more than two dozen companies and invited others to apply for a similar waiver of liability within six months. The FCC recently received a flurry of more than 60 requests for such immunity from advertisers who sent faxes to recipients *with* prior express permission, but *without* opt-out notices. The FCC is now seeking comment on these additional petitions, filed just prior to the deadline for a waiver request on April 30, 2015. Each advertiser argues “good cause [to receive a waiver] exists because they are similarly situated to the parties granted retroactive waivers” at the end of October.

Tip: This request for comment is a reminder that companies that send fax advertisements should ensure that they have an opt-out notice in the fax ad, even if the recipient has agreed to receive the fax.

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