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## The New Fax Laws Takes Effect

### Summary

In April 2006, the Federal Communications Commission (FCC) implemented changes to the facsimile (fax) advertising rules of the Telephone Consumer Protection Act of 1991 (TCPA). The new rules:

- Create an established business relationship (EBR) exemption to the prohibition on sending unsolicited fax advertisements;
- Define EBR as used in the context of unsolicited fax advertisements;
- Require an “opt-out” notice on all fax advertisements;
- Set forth “opt-out” requirements;
- Set forth specific requirements for “highly involved” fax broadcasters; and
- Without an established relationship, you may send an unsolicited fax ad if you have the permission of the recipient.

### The Law

The rules provide that it is unlawful to send a business or consumer an unsolicited fax, without the recipient’s prior express permission. However, under the amended rules, fax advertisements may be sent to recipients with whom the sender has an EBR, as long as the fax number was provided voluntarily by the recipient. Specifically, a fax advertisement may be sent to an EBR customer if the sender also:

1. Obtains the fax number directly from the recipient, through, for example, an application, contact information form, or membership renewal form; or
2. Obtains the fax number from the recipient’s *own* directory, advertisement, or site on the Internet, unless the recipient has noted on such materials that it does not accept unsolicited advertisements at the fax number in question; or
3. For directories and other sources of information compiled by third parties, the sender must take reasonable steps to verify that the recipient consented to have the number listed.
4. If the EBR existed before July 9, 2005, and the sender also possessed the fax number before July 9, 2005, the sender may send the fax advertisements without demonstrating how the number was obtained.

## **Definitions**

Unsolicited Advertisement - 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.

Established Business Relationship - 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 (payment), 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.

## **Opt-out Notice Requirements**

The rules require senders to provide specified notice and contact information on the fax that allow recipients to opt-out of future faxes. The notice must:

- Be clear and conspicuous and on the first page of the advertisement;
- State that the recipient may make a request to the sender not to send any future faxes and that failure to comply with the request within 30 days is unlawful; and
- Include a telephone number, fax number, and cost-free mechanism, which must be available at all times, to opt-out of future faxes.

Opt-out requests must be honored within 30 days.