

New FCC Fax Rule Stayed

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Political groups and commercial organizations have received a temporary and partial reprieve from new, restrictive Federal Communications Commission (FCC) rules regarding unsolicited faxes. On August 18, 2003, the FCC stayed part of its new fax regulation until January 1, 2005, after receiving petitions for stays from, among others, the National Association of Business Political Action Committees (NABPAC) and the Chamber of Commerce.

Under the new rules, adopted by the FCC as part of the rules accompanying its federal Do-Not-Call list, faxes containing "unsolicited advertisements" could only be sent if the recipient has provided prior, written permission—including the recipient's signature (or e-signature) and fax number—that includes a clear invitation to send the faxes. An "advertisement" is defined as "any material advertising the commercial availability or quality of any property, goods or services." Now, these rules are stayed until 2005.

On the other hand, the revised definition of "established business relationship" created by the rules has not been stayed. Therefore, in order for a faxing entity to avail itself of an exception for sending unsolicited faxes to persons with which it has an "established business relationship," the unsolicited faxes must be limited to those persons with which the entity had a transaction in the previous 18 months or from which it received an inquiry in the previous three months. This revised exception only goes into effect once the Office of Management and Budget gives its approval and the rule is published in the Federal Register. In the meantime, under the old FCC rules, established business relationships do not have an expiration date, and terminate only when the fax recipient asks to receive no more faxes.

Authors

Caleb P. Burns
Partner
202.719.7451
cburns@wiley.law

Wiley Rein & Fielding LLP attorneys formally have petitioned the FCC on behalf of NABPAC to reconsider the application of the new fax rule to PACs. Other parties, including the Chamber of Commerce, have also petitioned for reconsideration.