

(D) The system shall be designed to a P.01 standard.

(E) A LEC shall provide the call attempt rates and the rates of calls blocked between the LEC and the TRS facility to relay administrators and TRS providers upon request.

(3) *Equal access to interexchange carriers.* TRS users shall have access to their chosen interexchange carrier through the TRS, and to all other operator services, to the same extent that such access is provided to voice users.

(4) *TRS facilities.* (i) TRS shall operate every day, 24 hours a day. Relay services that are not mandated by this Commission need not to be provided every day, 24 hours a day.

(ii) TRS shall have redundancy features functionally equivalent to the equipment in normal central offices, including uninterruptible power for emergency use.

(5) *Technology.* No regulation set forth in this subpart is intended to discourage or impair the development of improved technology that fosters the availability of telecommunications to person with disabilities. TRS facilities are permitted to use SS7 technology or any other type of similar technology to enhance the functional equivalency and quality of TRS. TRS facilities that utilize SS7 technology shall be subject to the Calling Party Telephone Number rules set forth at 47 CFR 64.1600 *et seq.*

(6) *Caller ID.* When a TRS facility is able to transmit any calling party identifying information to the public network, the TRS facility must pass through, to the called party, at least one of the following: the number of the TRS facility, 711, or the 10-digit number of the calling party.

(c) \* \* \*

(2) *Contact persons.* Beginning on June 30, 2000, State TRS Programs, interstate TRS providers, and TRS providers that have state contracts must submit to the Commission a contact person and/or office for TRS consumer information and complaints about a certified State TRS Program's provision of intrastate TRS, or, as appropriate, about the TRS provider's service. This submission must include, at a minimum, the following:

(i) The name and address of the office that receives complaints, grievances, inquiries, and suggestions;

(ii) Voice and TTY telephone numbers, fax number, e-mail address, and web address; and

(iii) The physical address to which correspondence should be sent.

\* \* \* \* \*

(6) \* \* \*

(v) \* \* \*

(A) \* \* \*

(1) *Form.* An informal complaint may be transmitted to the Consumer & Governmental Affairs Bureau by any reasonable means, such as letter, facsimile transmission, telephone (voice/TRS/TTY), Internet e-mail, or some other method that would best accommodate a complainant's hearing or speech disability.

\* \* \* \* \*

[FR Doc. 03-21615 Filed 8-22-03; 8:45 am]

BILLING CODE 6712-01-P

**FEDERAL COMMUNICATIONS COMMISSION**

**47 CFR Parts 64**

**[CG Docket No. 02-278, FCC 03-208]**

**Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991.**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule; establishment of effective date.

**SUMMARY:** We recently revised the current Telephone Consumer Protection Act of 1991 (TCPA) rules, and adopted new rules modifying the Federal Communications Commission's (Commission's) unsolicited facsimile advertising requirements. This document establishes an effective date of January 1, 2005 for one provision of those rules. We have also modified the effective date of our determination that an established business relationship will no longer be sufficient to show that an individual or business has given express permission to receive unsolicited facsimile advertisements and the rule provision requiring that the sender of a facsimile advertisement first obtain the recipient's express permission in writing. The effective date of our amended definition of an "established business relationship" is not affected by our determination here.

**DATES:** Section 64.1200(a)(3)(i) published at 68 FR 44144, July 25, 2003, is effective January 1, 2005.

**ADDRESSES:** Federal Communications Commission, 445 12th Street SW., Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Erica H. McMahon or Richard D. Smith at 202-418-2512, Consumer & Governmental Affairs Bureau, Federal Communications Commission.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's *Order on Reconsideration* in CG Docket No. 02-278, FCC 03-208, adopted on August 18, 2003 and released August 18, 2003. The full text of this document is

available at the Commission's Web site <http://www.fcc.gov> on the Electronic Comment Filing System and for public inspection and copying during regular business hours in the FCC Reference Center, Room CY-A257, 445 12th Street, SW., Washington, DC 20554. The complete text may be purchased from the Commission's copy contractor, Qualex International, 445 12th Street, SW., Room CY-B402, Washington, DC 20554. To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer & Governmental Affairs Bureau at (202) 418-0531 (voice) or (202) 418-7365 (tty). This Order on Reconsideration can also be downloaded in Text or ASCII formats at <http://www.fcc.gov/cgb>.

**Synopsis**

On July 3, 2003, the Commission released a *Report and Order* revising many of its telemarketing and facsimile advertising rules pursuant to the TCPA. See 68 FR 44144, July 25, 2003. Pursuant to Section 1.108 of the Commission's rules, 47 CFR 1.108, on our own motion, we issue this limited reconsideration of the *Report and Order* and extend, until January 1, 2005, the effective date of our determination that an established business relationship will no longer be sufficient to show that an individual or business has given express permission to receive unsolicited facsimile advertisements. We also establish January 1, 2005 as the effective date of amended rule 47 CFR 64.1200(a)(3)(i), which provides that "a facsimile advertisement is not "unsolicited" if the recipient has granted the sender prior express invitation or permission to deliver the advertisement, as evidenced by a signed, written statement that includes the facsimile number to which any advertisements may be sent and clearly indicates the recipient's consent to receive such facsimile advertisements from the sender."

In the *Report and Order*, the Commission reversed its prior conclusion that an established business relationship provides companies with the necessary express permission to send faxes to their customers. The Commission determined that the established business relationship would no longer be sufficient to show that an individual or business has given express permission to receive unsolicited facsimile advertisements. Instead, the Commission concluded that the

recipient's express invitation or permission must be in writing and include the recipient's signature. The recipient must clearly indicate that he or she consents to receiving such faxed advertisements from the company to which permission is given, and must provide the individual's or business's fax number to which faxes may be sent.

On July 25, 2003, the American Society of Association Executives (ASAE) filed a petition for emergency clarification of the rules governing unsolicited facsimile advertisements as they apply to tax-exempt nonprofit organizations. This petition asked the Commission to issue a clarification that unsolicited facsimile communications are not prohibited when issued by tax-exempt nonprofit purposes. In addition, ASAE filed a petition for stay of the unsolicited facsimile rules as they apply to tax-exempt nonprofits in the event the Commission is unable to clarify the rules prior to their effective date. Many of ASAE's members and other organizations have filed comments in support of ASAE's petitions. The National Association of Realtors (NAR) also filed, on August 1, 2003, a Request for Emergency Stay of all of the facsimile advertisement rules, asking the Commission to grant a one-year stay of the recently adopted rules "to permit NAR and its members sufficient time to review and comply with the Commission's new, unanticipated, and unprecedented, unsolicited fax rules." A Request for Stay of the amended rules concerning unsolicited facsimile advertising as they apply to the publishers of Requester Publications, along with a Request for Expedited Clarification of the unsolicited facsimile rules, were filed by Proximity Marketing on August 6, 2003. In addition, on August 8, 2003, a Request for Stay of the amended rules concerning unsolicited facsimile advertising as they apply to political action committees was filed by the National Association of Business Political Action Committees. The Chamber of Commerce of the United States, the Community Association Institute, the National Association of Manufacturers, the National Association of Wholesaler-Distributors, the National Restaurant Association, and the National Federation of Independent Business (Chamber of Commerce of the United States, *et al.*) filed, on August 8, 2003, a Request for Stay of the amended rules that apply to unsolicited commercial faxes. The American Society of Travel Agents, Mortgage Bankers Association of America, National Association of Mortgage Brokers, Consumer Mortgage Coalition,

and the Midwest Circulation Association (collectively, the Business Users Coalition) also submitted a Petition for Emergency Stay of at least six (6) months of the rules regarding unsolicited facsimile advertisements. A Petition for Stay of the rules governing the nature of "express permission" required to send advertisements by fax was filed by American Business Media. A Petition for Emergency Stay & Clarification of the amended rules governing unsolicited facsimile advertisements as they apply to tax-exempt nonprofit organizations was submitted by the Air Conditioning Contractors of America. A Request for Stay of those rules governing unsolicited fax advertising was filed by the American Dietetic Association. Reed Elsevier Inc. submitted a Motion for Stay of the effective date of the amended fax consent rule at 64.1200(a)(3)(i). The Newspaper Association of America and the National Newspaper Association filed a Petition for Stay of the Commission's amended rules on unsolicited facsimile advertisements.

The American Teleservices Association (ATA) also submitted on July 25, 2003 a Request for Expedited Stay of the Commission's revisions to the rules implementing the TCPA. The ATA requests that the Commission stay the revisions to the rules implementing the TCPA, pending a final decision on judicial review of the new rules. ATA's petition relates primarily to the new telephone solicitation rules, including the national do-not-call registry.

We now, on our own motion, issue this limited reconsideration of the effective date of our determination that an established business relationship will no longer be sufficient to show that an individual or business has given express permission to receive unsolicited facsimile advertisements, as well as the amended unsolicited facsimile provisions at 47 CFR 64.1200(a)(3)(i). Section 64.1200(a)(3)(i), as amended, requires the sender of a facsimile advertisement to first obtain from the recipient a signed, written statement that includes the facsimile number to which any advertisements may be sent and clearly indicates the recipient's consent to receive such facsimile advertisements from the sender. The comments filed after the release of the *Report and Order* indicate that many organizations may need additional time to secure this written permission from individuals and businesses to whom they fax advertisements. We believe that, in light of this new information, the public interest would best be served by allowing senders of such advertisements

additional time to obtain such express permission before the new rules become effective. In addition, this effective date will allow the Commission the opportunity to consider any petitions for reconsideration and other filings that may be made on this issue. We retain the discretion to extend the effective date should circumstances warrant such an action. We emphasize that our existing TCPA rules prohibiting the transmission of unsolicited advertisements to a telephone facsimile machine will remain in effect during the pendency of this extension. Under these rules, those transmitting facsimile advertisements must have an established business relationship or prior express permission from the facsimile recipient to comply with our rules. In addition, the effective date of the other amended facsimile rules remains unchanged by this *Order on Reconsideration*. See 47 CFR 68.318(d) (amending the rules to require any fax broadcaster that demonstrates a high degree of involvement in the transmission of messages to be identified on the facsimile, along with the identification of the sender).

We emphasize that the only effective date of the Commission's *Report and Order* established by this *Order on Reconsideration* is the requirement that the sender of a facsimile advertisement first obtain the recipient's express permission in writing. In addition, as of January 1, 2005, an established business relationship will no longer be sufficient to show that an individual or business has given express permission to receive unsolicited facsimile advertisements. Therefore, until the amended rule at 47 CFR 64.1200(a)(3)(i) becomes effective on January 1, 2005, an established business relationship will continue to be sufficient to show that an individual or business has given express permission to receive facsimile advertisements. The effective date of our amended definition of an "established business relationship" is not affected by our determination here.

We have considered and rejected ATA's request to stay the revisions to the rules implementing the TCPA to the extent that such request extends beyond the fax rules discussed above. Although the Commission has declined to adopt a single standard for requests for injunctive relief, we generally consider four criteria: (1) The likelihood of success on the merits, (2) the threat of irreparable harm absent grant of preliminary relief, (3) the degree of injury to other parties if relief is granted, and (4) that a stay will be in the public interest. See *Virginia Petroleum Jobbers Ass'n v. Federal Power Commission*, 259

F.2d 921 (D.C. Cir. 1958). We conclude that ATA's request does not satisfy the factors governing the issuance of a stay.

The actions contained herein have not changed our Final Regulatory Flexibility Analysis (FRFA), which is set forth in the *Report and Order*. Thus, no supplemental FRFA is necessary. In addition, the action contained herein imposes no new or modified reporting and/or recordkeeping requirements or burdens on the public.

#### Ordering Clauses

1. Accordingly, pursuant to sections 1-4, 222, 227, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151-154, 222 and 227; and section 1.108 of the Commission's Rules, 47 CFR 1.108, of the Commission's Rules, this *Order on Reconsideration* in CG Docket No. 02-278 is adopted and the *Report and Order*, FCC 03-153, is modified as set forth herein.

2. Subject to the effective dates set forth above, the National Association of Realtors' Request for Emergency Stay is dismissed without prejudice.

3. Subject to the effective dates set forth above, the American Society of Association Executives' Petition for Stay is dismissed without prejudice.

4. Subject to the effective dates set forth above, Proximity Marketing Request for Stay is dismissed without prejudice.

5. Subject to the effective dates set forth above, the National Association of Business Political Action Committees' Request for Stay is dismissed without prejudice.

6. Subject to the effective dates set forth above, the Chamber of Commerce of the United States *et al.* Request for Stay is dismissed without prejudice.

7. Subject to the effective dates set forth above, the Business Users Coalition's Petition for Emergency Stay is dismissed without prejudice.

8. Subject to the effective dates set forth above, the American Business Media's Petition for Stay is dismissed without prejudice.

9. Subject to the effective dates set forth above, the Air Conditioning Contractors of America's Petition for Emergency Stay is dismissed without prejudice.

10. Subject to the effective dates set forth above, the American Dietetic Association's Request for Stay of the Implementation of Regulations is dismissed without prejudice.

11. Subject to the effective dates set forth above, Reed Elsevier Inc.'s Motion for Stay is dismissed without prejudice.

12. Subject to the effective dates set forth above, the Newspaper Association

of America and the National Newspaper Association's Petition for Stay is dismissed without prejudice.

13. The American Teleservices Association Request for Expedited Stay is dismissed without prejudice to the extent it seeks a stay of the rules affected by the effective dates set forth above, but is otherwise denied.

14. The effective date for the Commission's determination that an established business relationship will no longer be sufficient to show that an individual or business has given express permission to receive unsolicited facsimile advertisements and the requirement that the sender of a facsimile advertisement first obtain the recipient's express permission in writing, as codified at 47 CFR 64.1200(a)(3)(i), IS January 1, 2005, and that this *Order on Reconsideration* is effective upon publication in the **Federal Register**. In light of the need to allow affected entities time to comply with the new faxing rules, we find good cause, pursuant to 5 U.S.C. 553(d), to make this effective on less than 30 days' notice.

#### List of Subjects

47 CFR Part 64

Telephone.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03-21644 Filed 8-22-03; 8:45 am]

BILLING CODE 6712-01-P

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

#### 49 CFR Part 1002

[STB Ex Parte No. 542 (Sub-No. 10)]

#### Regulations Governing Fees For Services Performed in Connection With Licensing and Related Services—2003 Update

**AGENCY:** Surface Transportation Board.

**ACTION:** Final rules.

**SUMMARY:** The Board adopts its 2003 User Fee Update and revises its fee schedule at this time to recover the costs associated with the January 2003 Government salary increases and to recover increased **Federal Register** costs to the Board.

**EFFECTIVE DATE:** These rules are effective September 24, 2003.

**FOR FURTHER INFORMATION CONTACT:** David T. Groves, (202) 565-1551, or Anne Quinlan, (202) 565-1727. [TDD

for the hearing impaired: 1-800-877-8339.]

**SUPPLEMENTARY INFORMATION:** The Board's regulations in 49 CFR 1002.3 require the Board's user fee schedule to be updated annually. The Board's regulation at 49 CFR 1002.3(a) provides that the entire fee schedule or selected fees can be modified more than once a year, if necessary. The Board's fees are revised based on the cost study formula set forth at 49 CFR 1002.3(d). Also, in some previous years, selected fees were modified to reflect new cost study data or changes in agency fee policy.

Because Board employees received a salary increase of 4.27% in January 2003, we are updating our user fees to recover the increased personnel costs. With certain exceptions, all fees will be updated based on our cost formula contained in 49 CFR 1002.3(d). In addition, the cost to publish data in the **Federal Register** increased last year, so we are revising the fees to give consideration to that increase.

The fee increases involved here result only from the mechanical application of the update formula in 49 CFR 1002.3(d), which was adopted through notice and comment procedures in *Regulations Governing Fees for Services-1987 Update*, 4 I.C.C.2d 137 (1987). In addition, no new fees are being proposed in this proceeding. Therefore, we find that notice and comment are unnecessary for this proceeding. See *Regulations Governing Fees For Services-1990 Update*, 7 I.C.C.2d 3 (1990); *Regulations Governing Fees For Services-1991 Update*, 8 I.C.C.2d 13 (1991); and *Regulations Governing Fees For Services-1993 Update*, 9 I.C.C.2d 855 (1993).

We conclude that the fee changes adopted here will not have a significant economic impact on a substantial number of small entities because the Board's regulations provide for waiver of filing fees for those entities that can make the required showing of financial hardship.

Additional information is contained in the Board's decision. To obtain a copy of the full decision, write, call, or pick up in person from the Board's contractor, Da-To-Da Legal, Suite 405, 1925 K Street, NW, Washington, DC 20006. Telephone: (202) 293-7776. [Assistance for the hearing impaired is available through TDD services 1-800-877-8339.]

#### List of Subjects in 49 CFR Part 1002

Administrative practice and procedure, Common carriers, Freedom of information, User fees.

Decided: August 18, 2003.