

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