

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)
)
RingCentral, Inc. Petition for Expedited) CG Docket No. 02-278
Declaratory Ruling)

To: The Commission

VON COALITION COMMENTS IN SUPPORT OF RINGCENTRAL PETITION

The Voice on the Net Coalition (“VON”)¹ respectfully files these comments in support of the petition for declaratory ruling submitted by RingCentral, Inc. (“RingCentral”) in the above-captioned proceeding.² RingCentral seeks Commission clarification with request to a number of issues under the Telephone Consumer Protection Act (“TCPA” or “Act”). Specifically, RingCentral seeks clarifications regarding: 1) the definition of a fax “sender” for purposes of the TCPA’s prohibition against sending unsolicited advertisements by facsimile; 2) *de minimis* promotional phrases contained in otherwise bona fide informational or transactional facsimile communications; and 3) that in limited circumstances fax broadcaster “senders” can rely on third party “consent”— at least for sending *de minimis* information along with a facsimile that is otherwise lawfully authored and sent by the fax broadcaster’s customer to a third party recipient.

¹ The VON Coalition is the leading advocacy organization for the Internet communications industry, working with legislators, regulators, and other policymakers to develop policies that support the availability and adoption of Internet communications products and services. For more information see www.von.org.

² See FCC, Public Notice, Consumer and Governmental Affairs Bureau Seeks Comment on RingCentral, Inc. Petition for Expedited Declaratory Ruling, DA 16-863 (rel. July 29, 2016) (“Notice”). See also RingCentral, Inc. Petition for Expedited Declaratory Ruling, CG Docket No. 02-278, (filed July 6, 2016) (“Petition”).

The Commission should grant RingCentral’s request, and clarify that the TCPA’s prohibitions on unsolicited advertising should not be misconstrued to cover legitimate communications.

First, and of primary concern to VON, is the need for Commission clarification of the term “sender” due to inconsistent interpretation of the Commission’s rules by various courts. Some courts have gone so far as to impose liability on entities whose names or information are included in unsolicited faxes, even if they had nothing to do with the sending of the facsimile itself, or its contents, such as in *Siding & Insulation Co. v. Alco Vending, Inc.*³ These decisions lead to results that conflict with both the text and intent of the TCPA. It strains credulity that the FCC’s policies can be interpreted in a way as to impose liability on an entity when a third party, who is not working at their behest or instruction, includes that entity’s goods or services in an unsolicited facsimile.

RingCentral correctly points out that Congress intended to impose liability only to those parties that are actually responsible for initiating a telephone call or sending a fax that is otherwise prohibited by the TCPA. The Commission has correctly defined the “sender” of a prohibited fax as “the person or entity *on whose behalf* a facsimile unsolicited advertisement is sent or whose goods or services are advertised or promoted in the unsolicited advertisement,”⁴ and that common carriers and fax broadcasters are not liable under the TCPA for the transmission of a prohibited fax message.⁵ Thus, a “high degree of involvement”⁶ should be required in the

³ 2016 WL 2620507 (6th Cir. May 9, 2016).

⁴ 47 C.F.R. § 64.1200(f)(10) (emphasis added).

⁵ *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, 10 FCC Red 12391, 12407-08 (1995) (“1995 TCPA Order”) (“[E]ntity or entities on whose behalf facsimiles are transmitted are ultimately liable for compliance with the rule banning unsolicited facsimile advertisements, and that fax broadcasters are not liable for compliance with this rule.”); *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Report and Order, 7 FCC Red 8752, 8780 (1992) (“1992 TCPA Order”) (“In the absence of a ‘high degree of involvement or actual notice of illegal

sending of an unsolicited facsimile before a party is subject to the TCPA. A mere mention of an entity, its products or services should not be enough to give rise to liability.

Any other interpretation misconstrues the text and intent of the statute, which imposes liability on a person for unlawfully *using a facsimile* machine to send an unsolicited advertisement.⁷ It requires conduct and action on the part of the defendant. Arguments that seek to impose liability on third parties, when they did not undertake the decision to send a fax, or contribute to its contents, should be dismissed on their face as being inconsistent with the requirements of the Act.

In this case, RingCentral did not direct the sender of the facsimile to send the fax and did not determine its content. Accordingly, RingCentral should not be liable as the “sender” of an unauthorized facsimile. Given the conflicts between prior FCC interpretations and various court decisions, VON asserts that the FCC to make clear its interpretation of the term “sender” and clarify that liability should not attach to those that do not undertake the decision to send a fax.

VON also supports the RingCentral Petition with respect to the requests made for clarification on *de minimis* advertisements. The goal of the TCPA is to prevent senders of advertisements to shift the cost of advertising to fax recipients. Thus, a *de minimis* amount of advertising should not convert an otherwise legitimate communication into an unsolicited advertisement. A company’s logo or business slogan should not be enough to warrant liability under the TCPA because it imposes essentially no additional cost on the recipient. Such information is incidental and should be treated as such.

use and failure to take steps to prevent such transmissions,’ common carriers will not be held liable for the transmission of a prohibited facsimile message.”).

⁶ 1995 TCPA Order at 12407-8.

⁷ 47 U.S.C. § 227(b)(1)(C).

The RingCentral footer on the facsimile in question seems to squarely fall within this exception. It constituted a small portion of a lawful communication, and it did not add any cost or burden to the recipient. VON submits that RingCentral's positions are reasonable and consistent with both the intent and the text of the statute.

Finally, VON agrees that if RingCentral is nonetheless deemed to be the "sender" of a fax, then it should be permitted to rely on the exceptions that would apply to RingCentral's customer that sent the facsimile that provide the customer with protection against claims that the facsimile was unsolicited). Such an interpretation is consistent with the Commission's *GroupMe Declaratory Ruling*,⁸ where it provided for "third party consent" under the TCPA. This is an important principle under which many SMS senders can reasonably operate, and the Commission should extend it to the "sender" of a fax.

For the foregoing reasons, VON supports RingCentral's Petition, and requests that the Commission issue a ruling consistent with the positions stated therein.

Respectfully submitted,

VOICE ON THE NET COALITION

/s/

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⁸ See *GroupMe, Inc./Skype Communications S.A.R.L. Petition for Expedited Declaratory Ruling, Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Declaratory Ruling, 29 FCC Rcd 3442 (2014) ("*GroupMe Declaratory Ruling*").