

July 23, 2004

## Legislation to Reverse FCC's Do-Not-Fax Rules in Congress

Last year the FCC voted to change its rules regarding the sending of commercial faxes to businesses and customers on the basis of an established business relationship. Under the new rules, which eliminated the established business relationship (EBR) exemption, a fax sender would have to first obtain the signed, written consent of the recipient with the recipient's fax number. This represented a dramatic shift in the FCC's rules and would have created a huge disruption for businesses that rely on faxing commercial information, both between themselves and to customers, had the new rules taken effect last year as the FCC originally intended. When the FCC announced the new rules in July 2003, Covington & Burling led a coalition of concerned businesses and associations in requesting a stay of the new rules. The FCC granted an unprecedented sixteen-month stay, which is set to expire December 31, 2004.

While many parties asked the FCC to reconsider its new rules and reinstate the EBR, it was clear that congressional action was needed to fix the problem created by the FCC's rule change. Both chambers have responded with exceptional speed to reinstate the EBR.

- In the House of Representatives, H.R. 4600, the Junk Fax Prevention Act, was introduced on June 16, 2004. The legislation was sponsored by a bipartisan group including by the Chairman and ranking Democratic member of the relevant House subcommittee and full committee. The Junk Fax Prevention Act, which reinstates the EBR exception and thus permits business to continue to fax customers, passed the House of Representatives unanimously on July 20, 2004.
- In the Senate, companion legislation to the House bill, S. 2603, was introduced on June 24, 2004. The legislation was sponsored by a bipartisan group of senators, including key members of the Senate Commerce Committee. S. 2603 was approved by the Senate Commerce Committee on July 22, 2004. It is awaiting final approval by the full Senate.

The Junk Fax Prevention Act has been moving with bipartisan support through both houses of Congress. But with the Senate now out of session until mid-September, and the new rules set to take effect at the end of the year, many businesses have indicated that they will need to consider putting in place burdensome and costly procedures to ensure they have signed, written consent from all recipients of their commercial faxes.

To avoid the costly process of creating and implementing internal compliance procedures in anticipation of the FCC's new rules taking effect on January 1, we intend, on behalf of more than 200 businesses and other organizations, to ask the FCC early next week for an extension of its stay for an additional six months. This will give both Congress and the FCC time to complete their processes without imposing unnecessary costs on businesses that members of Congress are working to avert.

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This information is not intended as legal advice, which may often turn on specific facts. Readers should seek specific legal advice before acting with regard to the subjects mentioned herein.

If you have any questions concerning the material discussed in this client alert, please call any the following members of our privacy practice group:

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