

Calendar No. 120

109TH CONGRESS }
1st Session }

SENATE

{ REPORT
109-76

THE JUNK FAX PREVENTION ACT OF 2005

R E P O R T

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND
TRANSPORTATION

ON

S. 714



JUNE 7, 2005.—Ordered to be printed

U.S. GOVERNMENT PRINTING OFFICE

39-010

WASHINGTON : 2005

SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED NINTH CONGRESS

FIRST SESSION

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THE JUNK FAX PREVENTION ACT OF 2005

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Mr. STEVENS, from the Committee on Commerce, Science, and
Transportation, submitted the following

REPORT

[To accompany S. 714]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (S. 714) to amend section 227 of the Communications Act of 1934 (47 U.S.C. 227) relating to the prohibition on junk fax transmissions, having considered the same, reports favorably thereon with amendments and recommends that the bill (as amended) do pass.

PURPOSE OF THE BILL

The purposes of this legislation are to:

- Create a limited statutory exception to the current prohibition against the faxing of unsolicited advertisements to individuals without their “prior express invitation or permission” by permitting such transmission by senders of commercial faxes to those with whom they have an established business relationship (EBR).
- Require that senders of faxes with unsolicited advertisements (i.e., “junk faxes”) provide notice of a recipient’s ability to opt out of receiving any future faxes containing unsolicited advertisements and a cost-free mechanism for recipients to opt out pursuant to that notice.
- Require the Federal Communications Commission (FCC) and Comptroller General of the United States to provide certain reports to Congress regarding the enforcement of these provisions.

BACKGROUND AND NEEDS

TELEPHONE CONSUMER PROTECTION ACT OF 1991

Congress first addressed the legality of faxing unsolicited advertisements to residential telephone subscribers in the Telephone Consumer Protection Act of 1991 (TCPA).¹ The law, which is still in effect, generally prohibits anyone from faxing unsolicited advertisements without “prior express invitation or permission” from the recipient. The statute contains no other exceptions for junk faxes, and does not authorize the FCC to create any additional exceptions.

In October 1992, the FCC released its original order interpreting the TCPA and establishing the rules implementing the junk fax prohibition. In response to comments by Mr. Fax and National Faxlist urging the Commission not to ban unsolicited faxes, the FCC in its order noted in a footnote (which remains unpublished in the Code of Federal Regulations) that the TCPA did not give it “discretion to create exemptions from or limit the effects of the prohibition.”² The footnote continued to say, “We note, however, that facsimile transmission from persons or entities who have an established business relationship with the recipient can be deemed to be invited or permitted by the recipient.”³ On this basis, many commercial entities considered an “established business relationship” or “EBR” to be a permissible exemption from the general prohibition of sending unsolicited faxes. Additionally, from 1992 through July 2003, the FCC enforced the TCPA junk fax provisions under this original interpretation.

The Commission continued to assess the effectiveness of the TCPA’s provisions over the course of the decade and, in September, 2002, sought public comment on a number of issues, including whether the FCC should refine or adopt new rules related to “unsolicited facsimile advertisements.” The FCC explained its purpose for initiating this formal review proceeding as follows: “In the last ten years, telemarketing practices have changed significantly. New technologies have emerged that allow telemarketers to target potential customers better and that make marketing using telephones and facsimile machines more cost-effective. At the same time, the new telemarketing techniques have increased public concern about the impact on consumer privacy.”⁴

On March 11, 2003, the Do-Not-Call Act was signed into law. In addition to authorizing the Federal Trade Commission (FTC) to implement a national registry, it also required the FCC to issue a final rule in its ongoing TCPA proceeding within 180 days. Additionally, it required the FCC to consult and coordinate with the FTC to “maximize consistency” with the rules promulgated by the FTC.⁵

¹P.L. 102-243; 47 U.S.C. 227.

²See Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, CC Docket No. 92-90, Report and Order, 7 FCC Rcd 8752 (rel. 1992) (hereinafter, “1992 TCPA Order”), at 8779, para. 54, n. 87.

³Id.

⁴FCC Press Release, September 12, 2002 (http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-226183A1.doc).

⁵See Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, CG Docket No. 02-278, Report and Order, 18 FCC Rcd 14014 (2003) (hereinafter, “July 2003 TCPA Order”).

JULY 2003 FEDERAL COMMUNICATIONS COMMISSION TCPA ORDER:
REVISED JUNK FAX RULES

On July 3, 2003, the FCC issued its report and order establishing the Do-Not-Call registry and updating the provisions of the TCPA, including the junk fax provisions. After reviewing the record regarding the use and enforcement of junk faxes as well as the legislative history of the TCPA, the Commission reversed its prior conclusion that the presence of an EBR between a fax sender and recipient establishes the requisite consent necessary to permit businesses to send commercial faxes to their customers, effectively eliminating the EBR exception to the general prohibition on unsolicited fax advertisements.⁶ Instead, the FCC concluded that a recipient's express invitation or permission must be obtained in writing, include the recipient's signature, contain a clear indication that he or she consents to receiving such faxed advertisements, and provide the fax number to which faxes are permitted to be sent.⁷

Reviewing the record, the FCC found that a majority of consumer advocates disagreed with the Commission's prior interpretation that an EBR constituted prior express permission, and they urged the Commission to eliminate the EBR exemption. In describing the record they had examined since 2002, the FCC stated that consumers felt "besieged" by unsolicited faxes and that "advertisers continue to send faxes despite [their] asking to be removed from senders' fax lists." The FCC also said consumers indicated they bore the burden of not only paying for the cost of paper and toner, but also the opportunity costs of "time spent reading and disposing of faxes, the time the machine is printing an advertisement and is not operational for other purposes, and the intrusiveness of faxes transmitted at inconvenient times, including in the middle of the night."⁸

Conversely, the FCC found that the majority of industry commenters on the issue not only supported the Commission's prior interpretation permitting reliance on an EBR, but also urged the Commission to amend its rules implementing the TCPA to expressly provide for the EBR exemption. Industry comments maintained that "faxing is a cost-effective way to reach customers" particularly for small businesses for whom faxing is a cheaper way to advertise." They also warned that eliminating an EBR would "interfere with ongoing business relationships, raise business costs, and limit the flow of valuable information to consumers."⁹

In addition to weighing consumer and industry comments, the FCC's order analyzed the legislative history of the TCPA. The Commission stated that Congress's primary purpose in passing the Act was to protect the public from bearing the costs of unwanted advertising, and the FCC maintained that "certain practices were treated differently because they impose costs on consumers."¹⁰ The FCC cited other examples where the TCPA prohibits advertising calls without prior express consent, such as calls to wireless phones and other numbers where the called party is charged, viewing that cost-shifting onto consumers as identical in nature with respect to fax

⁶Id.

⁷Id.

⁸Id. at para. 186.

⁹Id.

¹⁰Id. at para. 190.

advertising where consumers must pay for paper and toner. It also pointed out that, unlike telemarketing, Congress provided no mechanism for opting out of unwanted faxes, arguing that to create such a system would “require the recipient to possibly bear the cost of the initial facsimile and inappropriately place the burden on the recipient to contact the sender and request inclusion on a ‘do-not-fax’ list.”¹¹ For these reasons, the FCC concluded that Congress had made the determination that entities desiring to fax unsolicited advertisements must obtain express permission from the recipient before they do so.

With respect to the other new requirements imposed by the FCC for obtaining prior permission (e.g., written consent, signature, etc.), the Commission justified them on the basis that they believed “the interest in protecting those who would otherwise be forced to bear the burdens of unwanted faxes outweighs the interests of companies that wish to advertise via fax.”¹²

AUGUST 2003 FEDERAL COMMUNICATIONS COMMISSION ORDER ON RECONSIDERATION; STAY OF EFFECTIVE DATE FOR REVISED JUNK FAX RULES

Following the FCC’s release of the amended TCPA rules, numerous petitions for reconsideration were filed with the Commission requesting that the FCC maintain its earlier interpretation of the junk fax rules. Those businesses, associations, and other organizations that had relied on the prior interpretation for over a decade argued that to now require prior, written permission for every fax sent out to an existing customer or client was an overly burdensome regulation that would be expensive to implement and was ultimately unnecessary to protect consumers. Many companies also argued that it would be impossible to change their practices overnight and obtain the necessary consents by August 25th (30 days after the appearance of rules in the Federal Register) in order to comply with the rule’s effective date, leaving them with only the option to immediately litigate.

Finally, many industry petitioners challenged the FCC’s fundamental premise that the new rules were better for consumers, contending instead that the revised interpretation would have significant, unintended consequences that harmed consumers. For example, restaurants pointed out that they would not be able to fax a menu to a customer who called and requested one unless the caller provided them with a written consent (presumably by fax) or had one on file. Additionally, realtors explained that, in their business, potential home buyers often call and request faxes when passing by homes for sale. They argued that the FCC’s new requirement for a written signature would effectively prevent realtors from faxing potential new home buyers the listing information they requested when they made such calls, adding unnecessary hurdles and delays even when consumers clearly wanted to receive the faxes as quickly as possible.

In light of these additional claims, on August 18, 2003, the Commission stayed until January 1, 2005, the effective date of both the written consent requirements as well as its July 2003 determina-

¹¹ Id.

¹² Id. at para. 191.

tion that an EBR would no longer be sufficient to show that an individual or business has given express permission to receive unsolicited fax advertisements. The stay has been extended through June 30, 2005. At the time, the FCC justified its adoption of the stay because “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.” The order also noted that this extension would give the FCC itself more time to fully consider any more petitions for reconsideration on these or related issues, and that the FCC reserved the right to further extend the effective date if necessary.¹³

OCTOBER 2003 FEDERAL COMMUNICATIONS COMMISSION ORDER; STAY OF “18/3” TIME LIMITS ON EXISTING BUSINESS RELATIONSHIP EXCEPTION FOR JUNK FAXES

In the July 2003 TCPA Order, the FCC had also modified its definition of an EBR in the context of telephone solicitations to limit the duration that a telemarketer could rely on the exception to a maximum of 18 months following a purchase or transaction, or a maximum of three months following an inquiry or application (commonly referred to as the “18/3” time limits). Prior to that ruling, no limitation had been placed on the duration of the EBR as it applied to either telephone or fax solicitations, but the FCC concluded that establishing time limits was “necessary to minimize confusion and frustration for consumers who receive calls from companies they have not contacted or patronized for many years.” Because there was “little consensus” among industry players who had offered various lengths of time, the FCC sought a duration that “strikes an appropriate balance between industry practices and consumer privacy interests,” settling on the 18/3 time frame. Acknowledging that these time limits created burdens on industry (especially small businesses) to monitor the length of their customer relationships, the FCC argued that endorsing a rule consistent with the FTC’s own 18/3 time limit would benefit businesses by creating a “uniform standard with which businesses must comply” regardless of which agency’s jurisdiction the businesses fell under.¹⁴ This also helped fulfill the FCC’s charge from Congress to maximize consistency between the agencies’ telemarketing rules.

Recognizing that the FCC’s August 2003 Order on Reconsideration had reinstated an EBR for junk faxes, but potentially limited its duration to the 18/3 rule for telemarketing, the U.S. Chamber of Commerce and others filed a petition for reconsideration one week later on August 25, 2003, requesting, among other things, that the FCC reconsider the new 18/3 rule.¹⁵ In response, the FCC issued an order on October 3, 2003, staying until June 30, 2005, the 18/3 limitations only with respect to their application to unsolicited fax advertisements. Because the modification of the EBR duration in the July 2003 TCPA Order was promulgated in the con-

¹³ See Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, CG Docket No. 02-278, Order on Reconsideration, FCC 03-208 (rel. Aug. 18, 2003) (hereinafter, “August 2003 Order on Reconsideration”).

¹⁴ See July 2003 TCPA Order at para. 34.

¹⁵ See, e.g., Chamber of Commerce of the United States, Petition for Reconsideration of Facsimile Advertisements Rules, filed August 25, 2003; National Association of Chain Drug Stores, Petition for Clarification and Revision, filed August 25, 2003.

text of telephone solicitations, the FCC held that there was good cause to stay application of those time limitations to the EBR in the context of junk faxes until it had time to consider the application of the 18/3 time limits in the context of junk faxes.¹⁶ The FCC concluded, however, that nothing in this new order would affect its August 2003 decision to stay the elimination of the EBR exception to the general prohibition against unsolicited faxes until June 30, 2005.

EFFECTS OF REVISED RULES AND NEED FOR LEGISLATION

In practice, the revised junk fax rules, as ordered by the FCC would have significant consequences. The cost and effort of compliance could place significant burdens on some businesses, particularly those small businesses that rely heavily on the efficiency and effectiveness of fax machines. In particular, organizations such as trade associations and other non-profits that have hundreds of thousands of members, would be saddled with a huge burden to collect signatures from each member just to send an unsolicited fax advertisement.

For instance, the National Association of Wholesaler-Distributors claimed that its member companies expected to pay an average of \$22,500 to obtain consent forms and an average of \$20,000 for annual compliance. The National Association of Realtors estimated that it would have to collect over 67 million permissions to sustain the roughly 6 million home sales from the previous year. Other economic impacts included the costs of training, making multiple contracts to obtain signatures providing consent, and obtaining permission for each fax machine when the recipients change location.

Finally, over the past 10 years, following enactment of the TCPA and issuance of previous FCC orders implementing and interpreting the rules on junk faxes, many legitimate businesses and associations have appropriately relied on the FCC's interpretation and have sent unsolicited faxes to recipients with whom they have an EBR. During this time, the FCC has acknowledged that businesses faxing under EBRs were in compliance with the FCC's existing junk fax rules. If the revised rules go into effect, the previously legitimate practices will be immediately unlawful, and unsuspecting or uninformed businesses may be subject to unforeseen and costly litigation unrelated to legitimate consumer protection aims.

The revised rules are currently set to go into effect on July 1, 2005, following the expiration of the FCC's currently self-imposed, and extended stay. Because the Commission may choose not to reverse its new rule removing the EBR exception from the general ban on sending unsolicited facsimile advertisements, S. 714, the "Junk Fax Prevention Act of 2005" specifically creates a statutory exception from the general prohibition on sending unsolicited advertisements if the fax is sent based on an EBR and certain conditions are met. This legislation is designed to permit legitimate businesses to do business with their established customers and other persons with whom they have an established relationship without the burden of collecting prior written permission to send these recipients commercial faxes. Nonetheless, in reinstating the

¹⁶See August 2003 Order on Reconsideration.

EBR exception, the Committee determined it was necessary to provide recipients with the ability to stop future unwanted faxes sent pursuant to such relationships. The Committee therefore also added the requirement that every unsolicited facsimile advertisement contain an opt-out notice that gives the recipient the ability to stop future unwanted fax solicitations and that senders of such faxes provide recipients with a cost-free mechanism to stop future unsolicited faxes.

SUMMARY OF PROVISIONS

S. 714, the “Junk Fax Prevention Act of 2005,” reestablishes an “established business relationship” exception to allow entities to send commercial faxes to their customers and members without first receiving written permission, and establishes new opt-out safeguards to provide additional protections for fax recipients.

LEGISLATIVE HISTORY

Senator Smith, the chairman of the Trade, Tourism, and Economic Development Subcommittee, introduced S. 714 on April 6, 2005, with Senators Stevens, Inouye, Snowe, Dorgan, Sununu, Burns, and Lautenberg as original cosponsors.

On April 13, 2005, the Committee held an Executive Session chaired by Senator Stevens at which S. 714 was considered. Senator Boxer offered two amendments. The first amendment would have amended section 2(c)(3) to require that senders of unsolicited advertisements notify recipient consumers or businesses of their ability to make a request to the sender of the unsolicited advertisement at any time of the day, seven days a week, to opt out of future solicitations. The bill as introduced allows for such a request to be made only during regular business hours. The second amendment would have amended section 2(f) to allow the FCC to commence a proceeding to determine whether to limit the duration of the existence of an established business relationship after the expiration of the 3-month period that begins on the date of enactment of this Act. The bill as introduced precludes the commencement of such FCC proceedings before the expiration of an 18-month period following the enactment of this Act. The amendments were adopted by voice vote. The bill, as amended, was approved unanimously by voice vote and ordered reported.

ESTIMATED COSTS

In accordance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate and section 403 of the Congressional Budget Act of 1974, the Committee provides the following cost estimate, prepared by the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, April 19, 2005.

Hon. TED STEVENS,
*Chairman, Committee on Commerce, Science, and Transportation,
U.S. Senate, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 714, the Junk Fax Prevention Act of 2005.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Melissa E. Zimmerman.
Sincerely,

ELIZABETH M. ROBINSON
(For Douglas Holtz-Eakin, Director)

Enclosure.

S. 714—Junk Fax Prevention Act of 2005

S. 714 would amend current law and regulations relating to unsolicited advertisements sent via telephone facsimile machine. The bill would direct the Federal Communications Commission (FCC) to issue regulations to control such advertisements and would require the FCC and the Government Accountability Office to issue reports to the Congress on the effectiveness of those regulations. The FCC currently enforces laws relating to unsolicited advertisements, including assessing and collecting civil penalties for violations of such laws. (Civil penalties are recorded in the federal budget as revenues.) Based on information from the FCC, CBO estimates that implementing S. 714 would have an insignificant effect on revenues or spending subject to appropriation. Enacting the bill would not affect direct spending.

S. 714 contains no intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would not affect the budgets of state, local, or tribal governments. The bill would not affect the ability of states to establish stricter rules for the use of telephone facsimile machines or other electronic devices to send unsolicited advertisements.

S. 714 would impose private-sector mandates as defined in UMRA on senders of unsolicited facsimile advertisements. The bill would require senders to include an opt-out notice that is clear, conspicuous, and on the first page. Such a notice would allow recipients to contact the sender to prevent them from sending unsolicited advertisements in the future. Additionally, the opt-out notice must include “a domestic contact telephone and facsimile machine number for the recipient to transmit such a request to the sender; and a cost-free mechanism for a recipient to transmit a request.” The cost-free mechanism might include either a toll-free or a local telephone number.

Regulations passed by the Federal Communications Commission in July 2003 that are slated to take effect in July 2005 would require written permission from recipients prior to senders’ transmission of any unsolicited fax advertisements. If this bill were enacted, it would eliminate the requirement to obtain written permission from customers but replace this requirement with the cost-free opt-out mechanism. Based on information from industry sources,

CBO expects that the aggregate direct cost of mandates in the bill would be fully offset by savings from the bill and thus would fall below the annual threshold established by UMRA for private-sector mandates (\$123 million in 2005, adjusted annually for inflation).

The CBO staff contacts for this estimate are Melissa E. Zimmerman (for federal costs), Sarah Puro (for the state and local impact), and Paige Piper/Bach (for the private-sector impact). The estimate was approved by Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

REGULATORY IMPACT STATEMENT

In accordance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee provides the following evaluation of the regulatory impact of the legislation, as reported:

NUMBER OF PERSONS COVERED

S. 714 would provide all individuals with fax machines certain protections from unsolicited senders of unsolicited faxes, and an opportunity to opt out of receiving future unsolicited faxes from them. Additionally, the legislation would require all persons who send commercial faxes to meet certain requirements, including proper identification, and to provide phone numbers or another cost free mechanism for recipients so they may opt out of future commercial faxes sent by that sender. Therefore, S. 714 would cover all consumers who receive faxes, and all senders of commercial faxes.

ECONOMIC IMPACT

The legislation would result in new or incremental costs for senders of commercial faxes to comply with the legislation's requirements, to the extent that those senders have not already made provisions to ensure proper identification of the sender, and provide cost free mechanisms that allow recipients to choose whether to receive future commercial faxes.

PRIVACY

S. 714 would increase the personal privacy of all users of fax machines by providing them with the ability to decline to receive future unsolicited commercial faxes from the same sender. S. 714 also would require senders of unsolicited commercial faxes to identify themselves to the recipients with truthful facsimile and telephone numbers where a recipient can contact the sender, thereby better informing the recipient of the identity of the sender.

PAPERWORK

S. 714 would require the Government Accountability Office (GAO) to conduct a study on junk fax enforcement and make recommendations to Congress on whether additional enforcement measures are necessary to protect consumers. S. 714 would also require the FCC to submit an annual report to Congress on enforcement of the junk fax provisions of this legislation over the previous year. The legislation is expected to generate similar amounts of administrative paperwork as other legislation requiring agency enforcement, recommendations for enhancing enforcement, and reports to Congress.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title

Section 1 would set forth the short title of the bill as the “Junk Fax Prevention Act of 2005.”

Section 2. Prohibition on fax transmissions containing unsolicited advertisements

Section 2(a) would amend section 227(b)(1)(C) of the Communications Act of 1934 (the “1934 Act”) by creating an existing business relationship exception to the general prohibition against sending unsolicited commercial advertisements to fax machines. This section would also require the sender of the fax to include an opt-out notice to the recipient as further required in section 2(c) below. Additionally, in the event a recipient chooses to opt out of receiving future unsolicited advertisements, this section would make it unlawful for a sender to fax any additional unsolicited advertisements to such a recipient.

Section 2(b) defines the term “established business relationship” by incorporating the definition of “established business relationship” in 47 C.F.R. 64.1200 as those regulations were in effect on January 1, 2003. Members should note that by defining this term by reference back to an earlier definition of “established business relationship,” this provision would specifically exclude the 18/3 time limits that are in the current definition of “established business relationship” in the C.F.R. (as ordered by the FCC’s July 2003 TCPA Order discussed above). Therefore, the effect would be to reinstate the junk fax rules back to the FCC’s original interpretation established in 1992, which was in effect until the July 2003 TCPA Order. Additionally, section 2(b) would apply the definition to both residential and commercial entities, and would also allow the Commission to limit the duration of the established business relationship pursuant to section 2(f) below.

Section 2(c) would add a new subparagraph (D) to section 227(b)(2) of the 1934 Act by setting forth the necessary elements of the opt-out notice required by Section 2(a). The bill does not prescribe particular language or methods to be used for opting out, but it would require that the notice: (i) be clearly and conspicuously displayed on the first page of the unsolicited advertisement; (ii) inform the recipient of his or her ability to opt-out of future unsolicited advertisements to any fax machine or machines and that any request must be complied with by the sender in the shortest reasonable time; (iii) explain the proper requirements for a valid opt out, as required in Section 2(d) below; and (iv) include a domestic telephone and fax number that will receive an opt-out request and describe a “cost-free mechanism” for the recipient to send such a request to the sender. In order to minimize the possible financial consequences of this provision, section 2(c) would also give the FCC the authority to exempt certain classes of small business senders from the requirement to provide the additional cost-free mechanism if the FCC determines that the costs to those businesses are unduly burdensome given the revenues generated by that class of small business.

Section 2(c) would also require that the telephone and fax numbers, and the cost-free mechanism, provided to a recipient must

permit an individual or business to make an opt-out request at any time. Finally, section 2(c) would require that the opt-out notice complies with the current provisions of Section 227(d) of the 1934 Act, which require that any unsolicited fax being sent contain in the margins at the top or bottom of each page the date and time it is sent, the identification of the sender of the message, and the telephone number of the sending machine.

Section 2(d) would add a new subparagraph (E) to section 227(b)(1) of the 1934 Act that sets forth what a recipient must do to opt out of future unsolicited advertisements. This subsection would require the FCC to promulgate rules to provide that an opt-out request is valid if it: (1) identifies the telephone number or numbers of the fax machine or machines subject to the request; (2) is made to the telephone or fax number of the sender that is provided under subparagraph (D)(iv) or by any other method as determined by the FCC; and (3) is made by a person who has not subsequently provided express invitation or permission to receive unsolicited advertisements.

Section 2(e) would add a new subparagraph (F) to 227(b)(1) of the 1934 Act that gives the FCC the authority to establish an exemption from the opt-out notice requirements for tax-exempt, non-profit trade or professional associations if those faxes are in furtherance of the group's tax-exempt purpose.

Section 2(f) adds a new subparagraph (G)(i) to section 227(b)(2) of the 1934 Act that gives the FCC the authority to establish a time limit on the "established business relationship" exemption. As this term is defined in section 2(b), there are no specific time limits on the duration of the "established business relationship" exception because none existed under the TCPA junk fax rules as of January 1, 2003. This subsection would authorize the FCC to create time limits on the duration that the exception would be available following an interaction between a sender and the recipient.

The FCC is prohibited from setting a time limit for the established business relationship for the first 3 months after enactment of this Act. Following this 3-month period, section 2(f) would permit the FCC to create a time limit for the established business relationship exemption after the Commission: (1) determines whether the existence of the established business relationship exception has resulted in a significant number of complaints to the FCC regarding the sending of unsolicited advertisements to telephone facsimile machines; (2) determines whether a significant number of complaints involve unsolicited advertisements that were sent based on an established business relationship that was longer than the FCC believes is consistent with the reasonable expectations of consumers; (3) evaluates the costs to senders of demonstrating the existence of an established business relationship within a specified period of time and the benefits to recipients of establishing a limitation on the established business relationship; and (4) determines whether, for small businesses, the costs would not be unduly burdensome.

Section 2(g) would amend the definition of "unsolicited advertisement" in section 227(a)(4) of the 1934 Act to mean "any material advertising...which is transmitted to any person without that person's prior express invitation or permission, in writing or otherwise." The effect of this amendment would be to statutorily prohibit

the FCC from promulgating a rule that would require prior express permission to be secured only in writing.

Section 2(h) would require the Commission to issue regulations to implement the amendments made by section 2 no later than 270 days after enactment of S. 714.

Section 3. FCC annual report regarding junk fax enforcement

Section 3 would add a new section (g) to section 227 of the 1934 Act to require the FCC to report annually to the Congress on the enforcement of the junk fax provisions of the TCPA. Specifically, the report would have to include the following: (1) the number of complaints received by the Commission annually alleging a violation of the general ban on sending unsolicited advertisements; (2) the number of citations issued for sending unsolicited advertisements; (3) the number of notices of apparent liability issued for sending unsolicited advertisements; (4) for each such notice (a) the amount of the proposed forfeiture, (b) the person to whom the notice was issued, (c) the length of time between the date on which the complaint was filed and the date the notice was issued, and (d) the status of the proceeding; (5) the number of final orders imposing forfeiture penalties for sending unsolicited advertisements; (6) for each such forfeiture order (a) the amount of the penalty, (b) the person to whom the order was issued, (c) whether the penalty was paid, and (d) the amount paid; and (7) for each case that was referred for recovery (a) the number of days from the date the FCC issues such order to the date of referral, (b) whether an action has been commenced to recover the penalty, and (c) whether the recovery action resulted in any amount collected.

Section 4. GAO study on junk fax enforcement

Section 4(a) would require GAO to conduct a study regarding complaints received by the FCC dealing with unsolicited advertisements that shall determine the following: (1) the mechanisms established by the Commission to receive, investigate and respond to such complaints; (2) the level of enforcement success by the Commission; (3) whether complainants are adequately informed by the Commission regarding their complaints; and (4) whether additional enforcement measures are necessary to protect consumers, including recommendations for additional enforcement measures.

Section 4(b) would require GAO specifically to examine (1) the adequacy of existing statutory enforcement actions available to the Commission; (2) the adequacy of existing statutory enforcement actions and remedies available to consumers; (3) the impact of existing statutory enforcement remedies on senders of facsimiles; (4) whether increasing the amount of financial penalties is warranted to achieve greater deterrent effect; and (5) whether establishing penalties and enforcement actions for repeat violators similar to those established in section 4 of the CAN-SPAM Act of 2003 (15 U.S.C. 7703) would have a greater deterrent effect.

Section 4(c) would require GAO to submit a report to Congress on the results of the study under this section no later than 270 days after enactment of this Act.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new material is printed in italic, existing law in which no change is proposed is shown in roman):

COMMUNICATIONS ACT OF 1934

SEC. 227. RESTRICTIONS ON USE OF TELEPHONE EQUIPMENT.

[47 U.S.C. 227]

(a) DEFINITIONS.—As used in this section—

(1) The term “automatic telephone dialing system” means equipment which has the capacity—

(A) to store or produce telephone numbers to be called, using a random or sequential number generator; and

(B) to dial such numbers.

(2) *The term “established business relationship”, for purposes only of subsection (b)(1)(C)(i), shall have the meaning given the term in section 64.1200 of title 47, Code of Federal Regulations, as in effect on January 1, 2003, except that—*

(A) such term shall include a relationship between a person or entity and a business subscriber subject to the same terms applicable under such section to a relationship between a person or entity and a residential subscriber; and

(B) an established business relationship shall be subject to any time limitation established pursuant to paragraph (2)(G).

[(2)] (3) The term “telephone facsimile machine” means equipment which has the capacity (A) to transcribe text or images, or both, from paper into an electronic signal and to transmit that signal over a regular telephone line, or (B) to transcribe text or images (or both) from an electronic signal received over a regular telephone line onto paper.

[(3)] (4) The term “telephone solicitation” means the initiation of a telephone call or message for the purpose of encouraging the purchase or rental of, or investment in, property, goods, or services, which is transmitted to any person, but such term does not include a call or message (A) to any person with that person’s prior express invitation or permission, (B) to any person with whom the caller has an established business relationship, or (C) by a tax exempt nonprofit organization.

[(4)] (5) The term “unsolicited advertisement” means any material advertising the commercial availability or quality of any property, goods, or services which is transmitted to any

person without that person's prior express invitation or **[permission.]** *permission, in writing or otherwise.*

(b) RESTRICTIONS ON USE OF AUTOMATED TELEPHONE EQUIPMENT.—

(1) PROHIBITIONS.—It shall be unlawful for any person within the United States, or any person outside the United States if the recipient is within the United States—

(A) to make any call (other than a call made for emergency purposes or made with the prior express consent of the called party) using any automatic telephone dialing system or an artificial or prerecorded voice—

(i) to any emergency telephone line (including any “911” line and any emergency line of a hospital, medical physician or service office, health care facility, poison control center, or fire protection or law enforcement agency);

(ii) to the telephone line of any guest room or patient room of a hospital, health care facility, elderly home, or similar establishment; or

(iii) to any telephone number assigned to a paging service, cellular telephone service, specialized mobile radio service, or other radio common carrier service, or any service for which the called party is charged for the call;

(B) to initiate any telephone call to any residential telephone line using an artificial or prerecorded voice to deliver a message without the prior express consent of the called party, unless the call is initiated for emergency purposes or is exempted by rule or order by the Commission under paragraph (2)(B);

[(C) to use any telephone facsimile machine, computer, or other device to send an unsolicited advertisement to a telephone facsimile machine; or]

(C) to use any telephone facsimile machine, computer, or other device to send, to a telephone facsimile machine, an unsolicited advertisement, unless—

(i) the unsolicited advertisement is from a sender with an established business relationship with the recipient; and

(ii) the unsolicited advertisement contains a notice meeting the requirements under paragraph (2)(D), except that the exception under clauses (i) and (ii) shall not apply with respect to an unsolicited advertisement sent to a telephone facsimile machine by a sender to whom a request has been made not to send future unsolicited advertisements to such telephone facsimile machine that complies with the requirements under paragraph (2)(E); or

(D) to use an automatic telephone dialing system in such a way that two or more telephone lines of a multi-line business are engaged simultaneously.

(2) REGULATIONS; EXEMPTIONS AND OTHER PROVISIONS.—The Commission shall prescribe regulations to implement the re-

quirements of this subsection. In implementing the requirements of this subsection, the Commission—

(A) shall consider prescribing regulations to allow businesses to avoid receiving calls made using an artificial or prerecorded voice to which they have not given their prior express consent;

(B) may, by rule or order, exempt from the requirements of paragraph (1)(B) of this subsection, subject to such conditions as the Commission may prescribe—

(i) calls that are not made for a commercial purpose; and

(ii) such classes or categories of calls made for commercial purposes as the Commission determines—

(I) will not adversely affect the privacy rights that this section is intended to protect; and

(II) do not include the transmission of any unsolicited advertisement; **[and]**

(C) may, by rule or order, exempt from the requirements of paragraph (1)(A)(iii) of this subsection calls to a telephone number assigned to a cellular telephone service that are not charged to the called party, subject to such conditions as the Commission may prescribe as necessary in the interest of the privacy rights this section is intended to **[protect.] protect;**

(D) shall provide that a notice contained in an unsolicited advertisement complies with the requirements under this subparagraph only if—

(i) the notice is clear and conspicuous and on the first page of the unsolicited advertisement;

(ii) the notice states that the recipient may make a request to the sender of the unsolicited advertisement not to send any future unsolicited advertisements to a telephone facsimile machine or machines and that failure to comply, within the shortest reasonable time, as determined by the Commission, with such a request meeting the requirements under subparagraph (E) is unlawful;

(iii) the notice sets forth the requirements for a request under subparagraph (E);

(iv) the notice includes—

(I) a domestic contact telephone and facsimile machine number for the recipient to transmit such a request to the sender; and

(II) a cost-free mechanism for a recipient to transmit a request pursuant to such notice to the sender of the unsolicited advertisement; the Commission shall by rule require the sender to provide such a mechanism and may, in the discretion of the Commission and subject to such conditions as the Commission may prescribe, exempt certain classes of small business senders, but only if the Commission determines that the costs to such class are unduly burdensome given the revenues generated by such small businesses;

(v) the telephone and facsimile machine numbers and the cost-free mechanism set forth pursuant to clause (iv) permit an individual or business to make such a request at any time on any day of the week; and
 (vi) the notice complies with the requirements of subsection (d);

(E) shall provide, by rule, that a request not to send future unsolicited advertisements to a telephone facsimile machine complies with the requirements under this subparagraph only if—

(i) the request identifies the telephone number or numbers of the telephone facsimile machine or machines to which the request relates;

(ii) the request is made to the telephone or facsimile number of the sender of such an unsolicited advertisement provided pursuant to subparagraph (D)(iv) or by any other method of communication as determined by the Commission; and

(iii) the person making the request has not, subsequent to such request, provided express invitation or permission to the sender, in writing or otherwise, to send such advertisements to such person at such telephone facsimile machine;

(F) may, in the discretion of the Commission and subject to such conditions as the Commission may prescribe, allow professional or trade associations that are tax-exempt nonprofit organizations to send unsolicited advertisements to their members in furtherance of the association's tax-exempt purpose that do not contain the notice required by paragraph (1)(C)(ii), except that the Commission may take action under this subparagraph only—

(i) by regulation issued after public notice and opportunity for public comment; and

(ii) if the Commission determines that such notice required by paragraph (1)(C)(ii) is not necessary to protect the ability of the members of such associations to stop such associations from sending any future unsolicited advertisements; and

(G)(i) may, consistent with clause (ii), limit the duration of the existence of an established business relationship, however, before establishing any such limits, the Commission shall—

(I) determine whether the existence of the exception under paragraph (1)(C) relating to an established business relationship has resulted in a significant number of complaints to the Commission regarding the sending of unsolicited advertisements to telephone facsimile machines;

(II) determine whether a significant number of any such complaints involve unsolicited advertisements that were sent on the basis of an established business relationship that was longer in duration than the Commission believes is consistent with the reasonable expectations of consumers;

(III) evaluate the costs to senders of demonstrating the existence of an established business relationship within a specified period of time and the benefits to recipients of establishing a limitation on such established business relationship; and

(IV) determine whether with respect to small businesses, the costs would not be unduly burdensome; and
(ii) may not commence a proceeding to determine whether to limit the duration of the existence of an established business relationship before the expiration of the 3-month period that begins on the date of the enactment of the Junk Fax Prevention Act of 2005.

(3) PRIVATE RIGHT OF ACTION.—A person or entity may, if otherwise permitted by the laws or rules of court of a State, bring in an appropriate court of that State—

(A) an action based on a violation of this subsection or the regulations prescribed under this subsection to enjoin such violation,

(B) an action to recover for actual monetary loss from such a violation, or to receive \$500 in damages for each such violation, whichever is greater, or

(C) both such actions.

If the court finds that the defendant willfully or knowingly violated this subsection or the regulations prescribed under this subsection, the court may, in its discretion, increase the amount of the award to an amount equal to not more than 3 times the amount available under subparagraph (B) of this paragraph.

(c) PROTECTION OF SUBSCRIBER PRIVACY RIGHTS.—

(1) RULEMAKING PROCEEDING REQUIRED.—Within 120 days after the date of enactment of this section, the Commission shall initiate a rulemaking proceeding concerning the need to protect residential telephone subscribers' privacy rights to avoid receiving telephone solicitations to which they object. The proceeding shall—

(A) compare and evaluate alternative methods and procedures (including the use of electronic databases, telephone network technologies, special directory markings, industry-based or company-specific “do not call” systems, and any other alternatives, individually or in combination) for their effectiveness in protecting such privacy rights, and in terms of their cost and other advantages and disadvantages;

(B) evaluate the categories of public and private entities that would have the capacity to establish and administer such methods and procedures;

(C) consider whether different methods and procedures may apply for local telephone solicitations, such as local telephone solicitations of small businesses or holders of second class mail permits;

(D) consider whether there is a need for additional Commission authority to further restrict telephone solicitations, including those calls exempted under subsection (a)(3) of this section, and, if such a finding is made and

supported by the record, propose specific restrictions to the Congress; and

(E) develop proposed regulations to implement the methods and procedures that the Commission determines are most effective and efficient to accomplish the purposes of this section.

(2) REGULATIONS.—Not later than 9 months after the date of enactment of this section, the Commission shall conclude the rulemaking proceeding initiated under paragraph (1) and shall prescribe regulations to implement methods and procedures for protecting the privacy rights described in such paragraph in an efficient, effective, and economic manner and without the imposition of any additional charge to telephone subscribers.

(3) USE OF DATABASE PERMITTED.—The regulations required by paragraph (2) may require the establishment and operation of a single national database to compile a list of telephone numbers of residential subscribers who object to receiving telephone solicitations, and to make that compiled list and parts thereof available for purchase. If the Commission determines to require such a database, such regulations shall—

(A) specify a method by which the Commission will select an entity to administer such database;

(B) require each common carrier providing telephone exchange service, in accordance with regulations prescribed by the Commission, to inform subscribers for telephone exchange service of the opportunity to provide notification, in accordance with regulations established under this paragraph, that such subscriber objects to receiving telephone solicitations;

(C) specify the methods by which each telephone subscriber shall be informed, by the common carrier that provides local exchange service to that subscriber, of (i) the subscriber's right to give or revoke a notification of an objection under subparagraph (A), and (ii) the methods by which such right may be exercised by the subscriber;

(D) specify the methods by which such objections shall be collected and added to the database;

(E) prohibit any residential subscriber from being charged for giving or revoking such notification or for being included in a database compiled under this section;

(F) prohibit any person from making or transmitting a telephone solicitation to the telephone number of any subscriber included in such database;

(G) specify (i) the methods by which any person desiring to make or transmit telephone solicitations will obtain access to the database, by area code or local exchange prefix, as required to avoid calling the telephone numbers of subscribers included in such database; and (ii) the costs to be recovered from such persons;

(H) specify the methods for recovering, from persons accessing such database, the costs involved in identifying, collecting, updating, disseminating, and selling, and other activities relating to, the operations of the database that are incurred by the entities carrying out those activities;

(I) specify the frequency with which such database will be updated and specify the method by which such updating will take effect for purposes of compliance with the regulations prescribed under this subsection;

(J) be designed to enable States to use the database mechanism selected by the Commission for purposes of administering or enforcing State law;

(K) prohibit the use of such database for any purpose other than compliance with the requirements of this section and any such State law and specify methods for protection of the privacy rights of persons whose numbers are included in such database; and

(L) require each common carrier providing services to any person for the purpose of making telephone solicitations to notify such person of the requirements of this section and the regulations thereunder.

(4) CONSIDERATIONS REQUIRED FOR USE OF DATABASE METHOD.—If the Commission determines to require the database mechanism described in paragraph (3), the Commission shall—

(A) in developing procedures for gaining access to the database, consider the different needs of telemarketers conducting business on a national, regional, State, or local level;

(B) develop a fee schedule or price structure for recouping the cost of such database that recognizes such differences and—

(i) reflect the relative costs of providing a national, regional, State, or local list of phone numbers of subscribers who object to receiving telephone solicitations;

(ii) reflect the relative costs of providing such lists on paper or electronic media; and

(iii) not place an unreasonable financial burden on small businesses; and

(C) consider (i) whether the needs of telemarketers operating on a local basis could be met through special markings of area white pages directories, and (ii) if such directories are needed as an adjunct to database lists prepared by area code and local exchange prefix.

(5) PRIVATE RIGHT OF ACTION.—A person who has received more than one telephone call within any 12-month period by or on behalf of the same entity in violation of the regulations prescribed under this subsection may, if otherwise permitted by the laws or rules of court of a State bring in an appropriate court of that State—

(A) an action based on a violation of the regulations prescribed under this subsection to enjoin such violation,

(B) an action to recover for actual monetary loss from such a violation, or to receive up to \$500 in damages for each such violation, whichever is greater, or

(C) both such actions.

It shall be an affirmative defense in any action brought under this paragraph that the defendant has established and implemented, with due care, reasonable practices and procedures to effectively prevent telephone solicitations in violation of the

regulations prescribed under this subsection. If the court finds that the defendant willfully or knowingly violated the regulations prescribed under this subsection, the court may, in its discretion, increase the amount of the award to an amount equal to not more than 3 times the amount available under subparagraph (B) of this paragraph.

(6) RELATION TO SUBSECTION (B).—The provisions of this subsection shall not be construed to permit a communication prohibited by subsection (b).

(d) TECHNICAL AND PROCEDURAL STANDARDS.—

(1) PROHIBITION.—It shall be unlawful for any person within the United States—

(A) to initiate any communication using a telephone facsimile machine, or to make any telephone call using any automatic telephone dialing system, that does not comply with the technical and procedural standards prescribed under this subsection, or to use any telephone facsimile machine or automatic telephone dialing system in a manner that does not comply with such standards; or

(B) to use a computer or other electronic device to send any message via a telephone facsimile machine unless such person clearly marks, in a margin at the top or bottom of each transmitted page of the message or on the first page of the transmission, the date and time it is sent and an identification of the business, other entity, or individual sending the message and the telephone number of the sending machine or of such business, other entity, or individual.

(2) TELEPHONE FACSIMILE MACHINES.—The Commission shall revise the regulations setting technical and procedural standards for telephone facsimile machines to require that any such machine which is manufactured after one year after the date of enactment of this section clearly marks, in a margin at the top or bottom of each transmitted page or on the first page of each transmission, the date and time sent, an identification of the business, other entity, or individual sending the message, and the telephone number of the sending machine or of such business, other entity, or individual.

(3) ARTIFICIAL OR PRERECORDED VOICE SYSTEMS.—The Commission shall prescribe technical and procedural standards for systems that are used to transmit any artificial or prerecorded voice message via telephone. Such standards shall require that—

(A) all artificial or prerecorded telephone messages (i) shall, at the beginning of the message, state clearly the identity of the business, individual, or other entity initiating the call, and (ii) shall, during or after the message, state clearly the telephone number or address of such business, other entity, or individual; and

(B) any such system will automatically release the called party's line within 5 seconds of the time notification is transmitted to the system that the called party has hung up, to allow the called party's line to be used to make or receive other calls.

(e) EFFECT ON STATE LAW.—

(1) STATE LAW NOT PREEMPTED.—Except for the standards prescribed under subsection (d) and subject to paragraph (2) of this subsection, nothing in this section or in the regulations prescribed under this section shall preempt any State law that imposes more restrictive intrastate requirements or regulations on, or which prohibits—

- (A) the use of telephone facsimile machines or other electronic devices to send unsolicited advertisements;
- (B) the use of automatic telephone dialing systems;
- (C) the use of artificial or prerecorded voice messages; or
- (D) the making of telephone solicitations.

(2) STATE USE OF DATABASES.—If, pursuant to subsection (c)(3), the Commission requires the establishment of a single national database of telephone numbers of subscribers who object to receiving telephone solicitations, a State or local authority may not, in its regulation of telephone solicitations, require the use of any database, list, or listing system that does not include the part of such single national database that relates to such State.

(f) ACTIONS BY STATES.—

(1) AUTHORITY OF STATES.—Whenever the attorney general of a State, or an official or agency designated by a State, has reason to believe that any person has engaged or is engaging in a pattern or practice of telephone calls or other transmissions to residents of that State in violation of this section or the regulations prescribed under this section, the State may bring a civil action on behalf of its residents to enjoin such calls, an action to recover for actual monetary loss or receive \$500 in damages for each violation, or both such actions. If the court finds the defendant willfully or knowingly violated such regulations, the court may, in its discretion, increase the amount of the award to an amount equal to not more than 3 times the amount available under the preceding sentence.

(2) EXCLUSIVE JURISDICTION OF FEDERAL COURTS.—The district courts of the United States, the United States courts of any territory, and the District Court of the United States for the District of Columbia shall have exclusive jurisdiction over all civil actions brought under this subsection. Upon proper application, such courts shall also have jurisdiction to issue writs of mandamus, or orders affording like relief, commanding the defendant to comply with the provisions of this section or regulations prescribed under this section, including the requirement that the defendant take such action as is necessary to remove the danger of such violation. Upon a proper showing, a permanent or temporary injunction or restraining order shall be granted without bond.

(3) RIGHTS OF COMMISSION.—The State shall serve prior written notice of any such civil action upon the Commission and provide the Commission with a copy of its complaint, except in any case where such prior notice is not feasible, in which case the State shall serve such notice immediately upon instituting such action. The Commission shall have the right (A) to inter-

vene in the action, (B) upon so intervening, to be heard on all matters arising therein, and (C) to file petitions for appeal.

(4) VENUE; SERVICE OF PROCESS.—Any civil action brought under this subsection in a district court of the United States may be brought in the district wherein the defendant is found or is an inhabitant or transacts business or wherein the violation occurred or is occurring, and process in such cases may be served in any district in which the defendant is an inhabitant or where the defendant may be found.

(5) INVESTIGATORY POWERS.—For purposes of bringing any civil action under this subsection, nothing in this section shall prevent the attorney general of a State, or an official or agency designated by a State, from exercising the powers conferred on the attorney general or such official by the laws of such State to conduct investigations or to administer oaths or affirmations or to compel the attendance of witnesses or the production of documentary and other evidence.

(6) EFFECT ON STATE COURT PROCEEDINGS.—Nothing contained in this subsection shall be construed to prohibit an authorized State official from proceeding in State court on the basis of an alleged violation of any general civil or criminal statute of such State.

(7) LIMITATION.—Whenever the Commission has instituted a civil action for violation of regulations prescribed under this section, no State may, during the pendency of such action instituted by the Commission, subsequently institute a civil action against any defendant named in the Commission's complaint for any violation as alleged in the Commission's complaint.

(8) DEFINITION.—As used in this subsection, the term "attorney general" means the chief legal officer of a State.

(g) *JUNK FAX ENFORCEMENT REPORT.*—*The Commission shall submit an annual report to Congress regarding the enforcement during the past year of the provisions of this section relating to sending of unsolicited advertisements to telephone facsimile machines, which report shall include—*

(1) *the number of complaints received by the Commission during such year alleging that a consumer received an unsolicited advertisement via telephone facsimile machine in violation of the Commission's rules;*

(2) *the number of citations issued by the Commission pursuant to section 503 during the year to enforce any law, regulation, or policy relating to sending of unsolicited advertisements to telephone facsimile machines;*

(3) *the number of notices of apparent liability issued by the Commission pursuant to section 503 during the year to enforce any law, regulation, or policy relating to sending of unsolicited advertisements to telephone facsimile machines;*

(4) *for each notice referred to in paragraph (3)—*

(A) *the amount of the proposed forfeiture penalty involved;*

(B) *the person to whom the notice was issued;*

(C) *the length of time between the date on which the complaint was filed and the date on which the notice was issued; and*

- (D) the status of the proceeding;*
- (5) the number of final orders imposing forfeiture penalties issued pursuant to section 503 during the year to enforce any law, regulation, or policy relating to sending of unsolicited advertisements to telephone facsimile machines;*
- (6) for each forfeiture order referred to in paragraph (5)—*
 - (A) the amount of the penalty imposed by the order;*
 - (B) the person to whom the order was issued;*
 - (C) whether the forfeiture penalty has been paid; and*
 - (D) the amount paid;*
- (7) for each case in which a person has failed to pay a forfeiture penalty imposed by such a final order, whether the Commission referred such matter for recovery of the penalty; and*
- (8) for each case in which the Commission referred such an order for recovery—*
 - (A) the number of days from the date the Commission issued such order to the date of such referral;*
 - (B) whether an action has been commenced to recover the penalty, and if so, the number of days from the date the Commission referred such order for recovery to the date of such commencement; and*
 - (C) whether the recovery action resulted in collection of any amount, and if so, the amount collected.*