

## FCC Affirms Demise Of Solicited Fax Rule

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Remember the Federal Communications Commission's (FCC) "solicited fax rule?" The agency adopted it in conjunction with implementing the Junk Fax Prevention Act of 1995. Even if a fax was deemed "solicited," the FCC said it had to include the opt-out requirements that were prescribed in that legislation.

After unsuccessful challenges at the Commission level, the United States Court of Appeals for the District of Columbia Circuit, in *Bais Yaakov of Spring Valley v. FCC*, 852 F.3d 1078, 1079, 1083 (D.C. Cir. 2017), ruled that the solicited fax rule was unlawful because it exceeded the Commission's statutory authority under the TCPA. Dutifully, in November 2018, the Commission's Wireline Competition Bureau eliminated the rule. *Fait accompli*, right?

Not willing to take no for an answer, a group of plaintiffs involved in TCPA litigation asked the full Commission to review the Bureau's action, contending in part that the Court's order did not constitute a "non-discretionary" mandate.

No soap [said the FCC earlier this week](#). "The D.C. Circuit explicitly concluded that the Commission was not authorized to enact a rule requiring opt-out notices on solicited faxes... Because the Solicited Fax Rule could no longer be viewed as lawful after the court's pronouncement, the Bureau's order eliminating the rule was not a discretionary implementation of the court's mandate...."

Presumably, there will be no effort to return to the D.C. Circuit. Solicited fax rule rest in peace.

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