

# FCC Holds that Fax Broadcasters are Solely Responsible for TCPA Violations When They Deceive Advertisers

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On September 21, 2020, the FCC's Consumer and Governmental Affairs Bureau issued a Declaratory Ruling resolving a petition that sought confirmation that in instances in which an advertiser is "stripped of [its] ability to control the fax campaign or ensure compliance with the TCPA" because of a fax broadcaster's "deception, fraud, blatant contract violations and misrepresentations," the advertiser is no longer the "sender" of the fax and, therefore, only the fax broadcaster is liable. The FCC [granted the petition](#), clarifying that "a fax broadcaster is solely liable for TCPA violations when it engages in deception or fraud against the advertiser."

The FCC's decision elaborates on a portion of its 2006 Junk Fax Order, which stated that "[i]n most instances" the "sender" will be "the entity whose products or service is advertised or promoted" by the fax." The Commission's new Declaratory Ruling provides an example in which a fax broadcaster wins business from an advertiser by falsely claiming to have consent from fax recipients to send the faxes. In this circumstance, the FCC states, the fax broadcaster has deceived the advertiser, which otherwise would not have sent the faxes at issue, and therefore only the fax broadcaster should be liable.

The Declaratory Ruling points to similar decisions reached by the courts to support the conclusion. In *Bridgeview Health Care Center v. Clark*, 816 F.3d 935 (7th Cir. 2016), a fax broadcaster had been authorized to send faxes to 100 businesses within 20 miles of the advertiser's location. Instead, it broadcasted the fax to 5,000 telephone numbers across three states. The Seventh Circuit concluded that the fax broadcasts were not sent "on behalf of" the advertiser, and therefore, the advertiser was not liable.

In *Paldo Sign & Display Co. v. Wagener Equities, Inc.*, 825 F.3d 793 (7th Cir. 2016), [the Seventh Circuit](#) found that where a business never authorized the fax broadcast transmission. Therefore, it could not be held liable. In that case, the fax broadcaster had sent over 10,000 faxes without obtaining the company's approval.

The Commission's Declaratory Ruling rejected arguments from some commentators that the company whose product or service is advertised should always be liable, finding that "'strict liability' . . . is neither consistent with our precedent nor equitable."

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