

## ROSES ARE RED, THE COURT HAD ITS SAY: Online Fax Services Get No TCPA

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Greetings TCPAWorld!

Happy Valentine's Day! Whether you're celebrating with loved ones or enjoying the discounted chocolate tomorrow, one thing's for sure—online fax providers won't feel the love from this latest ruling. In a significant ruling highlighting the collision between aging telecommunications laws and modern technology, a Colorado federal court dropped an important ruling on the online fax industry that needs to be on your radar. In *Astro Companies, LLC v. WestFax Inc.*, the Court tackled a deceptively simple question: Is an online fax service the same as a traditional fax machine under the law? See *ASTRO Co. v. Westfax Inc.*, Civil Action No. 1:23-cv-02328-SKC-CYC, 2025 U.S. Dist. LEXIS 25629 (D. Colo. Feb. 12, 2025).

Here's the deal. Astro Companies, an online fax provider, sued WestFax and others for allegedly bombarding their system with junk faxes. Astro claimed this violated the TCPA. But, of course, there was a catch—the TCPA explicitly protects “telephone facsimile machines,” and the court had to decide if Astro's cloud-based service qualified.

The Court's answer? A resounding no.

Judge S. Kato Crews dove deep into the statutory language, focusing on how the TCPA defines a “telephone facsimile machine.” While the law allows faxes to be sent from various devices (including computers), it only protects faxes received by actual fax machines. The Court noted in *Career Counseling, Inc. v. AmeriFactors Fin. Grp., L.L.C.*, 91 F.4th 202 (4th Cir. 2024) that the law was meant to protect equipment “well understood to be a traditional fax machine.”

But this wasn't just a case of statutory interpretation—it was a complete rejection of Astro's legal theory. The Court didn't just rule against Astro; it dismissed the entire case with prejudice, shutting down any attempt to refile the same claims.

What makes this ruling particularly interesting is how the Court distinguished between a machine and a service. The Judge pointed out that while Astro's servers could print faxes, it still wasn't enough. Black's Law Dictionary defines a machine as “a device or apparatus consisting of fixed and moving parts that work together to perform some function.” Astro's cloud-based service, despite its printing

capabilities, didn't fit this definition.

So what's next? Astro tried to argue that its service still counted under the TCPA because its servers "had the capacity to print." But the Court made clear that capacity alone isn't enough—the TCPA requires an actual telephone facsimile machine, not just a system that can eventually print a fax if someone decides to. Astro leaned heavily on *Lyngaas v. Curaden AG*, 992 F.3d 412 (6th Cir. 2021), but the Court saw a fundamental problem. In *Lyngass*, the case involved whether a computer receiving an eFax could qualify as a telephone facsimile machine. But Astro wasn't just a recipient—it was an online fax provider acting as an intermediary. That distinction alone made *Lyngaas* inapplicable.

Furthermore, the Court supported the FCC's interpretation, significantly weakening Astro's case. In *In re Amerifactors Fin. Grp., L.L.C.*, 34 FCC Rcd. 11950 (2019), the FCC explained that "a fax received by an online fax service as an electronic message is effectively an email." Unlike traditional fax machines that automatically print incoming messages (using up paper and ink), online fax services allow users to manage messages like emails—blocking, deleting, or storing them indefinitely.

This distinction highlights the core reason Congress enacted the TCPA. As noted in the 1991 House Committee Report, the law was concerned with two specific problems: 1) shifting the cost of unwanted advertisements to the recipient (through wasted paper and ink), and 2) tying up fax lines, preventing businesses from receiving legitimate communications. *H.R. Rep. No. 102-317, at 10 (1991)*. Neither of those concerns applies to online fax services, where nothing is automatically printed, and no business lines are blocked.

The takeaway? Consider this ruling a tough love letter from the court—if your service functions more like an email inbox than a fax machine, don't expect the TCPA to be your Valentine.

As always,

**Keep it legal, keep it smart, and stay ahead of the game.**

Talk soon!

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National Law Review, Volume XV, Number 45

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