FOOD MARKETING INSTITUTE

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On Monday, August 18, 2003, the Federal Communications Commission (FCC) released a stay order for the new commercial fax rule effective until January 1, 2005. The stay states that the purpose is to give businesses time to comply with the new regulations and to obtain written consent from each recipient before any commercial faxes are transmitted, including those with whom the business has a "prior business relationship." FMI's request appears below.

This rule was released by the Commission on Friday, July 25, 2003, dealing with commercial faxes. This rule was written to implement the national Do-Not-Call Registry, which the FCC and Federal Trade Commission recently established. Several other associations in other industries also made similar requests to stay the new fax rule on behalf of their own members. It's clear that this is a widespread problem for businesses in general.

FMI will continue to press the point that an established business relationship should provide complete exemption from this requirement.

Thanks, Tim

Letter to the FCC follows:

August 19, 2003

Mr. Michael K. Powell
Chairman
Federal Communications Commission
445 12th Street S. W.
Washington, DC 20554

Dear Chairman Powell:

Re: CG Docket No. 02-278; Implementing the Telephone Consumer Protection Act

On behalf of our wholesaler members serving the thousands of family-owned supermarkets doing business in every community throughout America, FMI requests that

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the FCC stay the Facsimile Advertisement Rules contained in the recently published Rules and Regulations Implementing the Telephone Consumer Protection Act [68 Fed Reg 44144 (2003)]. This request covers only those rules that apply to the section on unsolicited commercial faxes including 47 C.F.R. §§ 64.1200(a)(3) and 68.318.

Food Marketing Institute (FMI) conducts programs in research, education, industry relations and public affairs on behalf of its 2,300 member companies — food retailers and wholesalers — in the United States and around the world. FMI's U.S. members serve and operate approximately 26,000 retail food stores with a combined annual sales volume of $340 billion — three-quarters of all food retail store sales in the United States.

While the new rules governing unsolicited facsimiles will impact all of FMI's members, they will have an especially severe impact on our wholesaler members. These new commercial fax rules would require that even where wholesalers have an existing and ongoing business relationship with their customers they be required to obtain prior express written permission before sending any "unsolicited" commercial facsimile transmissions. This abandons the established business relationship exemption long accepted as common and legitimate business practice without clear notice and opportunity to comment.

These new facsimile transmission rules would disrupt the common method by which grocery wholesalers and their retail customers transact their business. Since many of the products covered under these practices are highly perishable in the supermarket business, and since many of these products must be delivered to stores several times each week, any disruption in the flow of products will cause irreparable harm to wholesalers, the family-owned supermarkets they serve and the consumers that depend on them throughout America.

These rules take effect without sufficient advance warning for wholesalers to be able to obtain the written permission required for compliance by the required date and without opportunity for the business community to be able to help build the record required for the FCC to properly evaluate these rules. In addition, there has been no evidence that these facsimile transmissions within the context of established, ongoing business relationships, where this method of doing business is commonly accepted, are causing any harm to the businesses receiving them.

For all of the reasons stated above, we request that the FCC grant a stay for the facsimile advertisement rules until the business community has an adequate opportunity to provide comment and until the FCC itself has an adequate opportunity to properly evaluate the consequences of this action.

Sincerely,

Tim Hammonds
President and CEO