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Testimony of  
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Before the Senate Committee on Commerce, Science and  
Transportation  
On Behalf of the National Newspaper Association  
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Good afternoon. My name is Jon E. (Jeb) Bladine. My purpose here today is to testify in support of S. 714, the Junk Fax Prevention Act of 2005. Junk faxes are the bane of many small businesses, including mine, and I want to congratulate Senator Smith and his co-sponsors for introducing a reasonable way to address them while trying to avoid undue burdens on businesses that use the fax machine responsibly.

### 1. Introduction and Biography

I am publisher and editor of the News-Register Publishing Company in McMinnville, Oregon. I am president of Oregon Lithoprint, Inc., a partner in McMinnville Access Company and Pacific Wave Communications, and chairman of the board of Oregon Interactive Corporation. Those titles are the long version of what I really do, which is to deliver information in print and electronically to my community in northwest Oregon, and through the Internet, worldwide.

My newspaper, the News-Register, has been in our family since my grandfather purchased it in 1928 and moved to Oregon from Iowa. Our family business spans four generations, and I am the fourth family member to serve as publisher. Our business interests include the newspaper, commercial printing, Internet access and Internet software development.

I have served in local and statewide civic organizations, including the McMinnville Jaycees, McMinnville and Oregon downtown development associations, Oregon Children's Services and the Oregon Heritage Commission. I have been a board member, legislative chairman and president of the Oregon Newspaper Publishers Association.

I am here today in my role as a regional director of the National Newspaper Association, a 120-year-old organization of community newspapers. NNA maintains a headquarters co-located with the University of Missouri, Columbia, MO, and a small office in Arlington, Virginia, to carry out our public affairs work. My job on the board, among other things, is to speak for community newspapers in my five states: Alaska, Idaho, Montana, Oregon and Washington.

## 2. Background of the Junk Fax issue

The National Newspaper Association has nearly 2,500 members. It is no understatement to say that our members are quite alarmed about the prospect that the Federal Communications Commission's signed consent rule for commercial faxes goes into effect July 1.

The Federal Communications Commission delivered quite a jolt to our industry with its Report and Order In the Matter of Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991. That order, adopted June 26, 2003, and released July 3, 2003, turned our world upside down by reversing the Commission's long-standing recognition that faxes from our newspapers to our established business customers are not, in fact, unsolicited faxes in the meaning of the TCPA. In discussion of its Report and Order, the Commission said consumers feel "besieged" by unsolicited faxes, despite the fact that the law prohibited them before 2003 and continues to do so. It announced:

"The Commission has determined that the TCPA requires a person or entity to obtain the prior express invitation or permission of the recipient before transmitting an unsolicited fax advertisement.

This express invitation or permission must be in writing and include the recipient's signature. The recipient must clearly indicate that he or she consents to receiving such faxed advertisements from the company to which permission is given, and provide the individual or business's fax number to which faxes may be sent."

The Commission expressly reversed its decision that an established business relationship (EBR) would be sufficient to show that an individual or business had given consent to receive a fax. This new rule was even more draconian than the procedures for compliance with the new Do Not Call rules, which were the principal subject of this Report and Order. At least in those rules, businesses were permitted to maintain relationships with their customers. Here, barring the creation of a costly database and compliance system, we will have to halt our recognized and traditional means of conveying information to people who want to receive faxes.

To add to our consternation, the Commission initially permitted our businesses only about six weeks to come into compliance. I know concerned and agitated business owners and staffers all over the country besieged the Commission and this Committee about that short deadline. I know staffers besieged most of our publishers' offices as our marketing departments envisioned their summer turning into a futile scramble to obtain these consent forms in time. Fortunately, the Commission relented and extended the deadline, and then extended it again.

Now we are staring down the barrel of a July 1 compliance date. And again, unless we set up costly database and compliance systems, we will see our use of the fax come to a halt this summer.

This is why we need Congress to pass S. 714 — and to move as urgently as possible. The expense will settle on our balance sheets this spring, within a matter of days, if action is not taken.

### 3. The truth about junk fax

All of us have seen our paper and ink go to waste from junk fax, for things ranging from cruises to low rate mortgages to health regimens for body parts that we don't all necessarily have. None of us like it. We may differ in our tolerance for other people using our machines to convey their commercial messages. But I hear complaints, and I complain myself from time to time.

However, it is important to remember that the newspapers I represent, and most of America's small businesses, are not producing this blitz of fax ads that so irritate us. We use the fax machine as a convenience and an efficient and urgent tool to communicate information to people who want it. The FCC's signed consent rule trips us up without presenting much of a barrier to those irritating blast faxers.

I assume that most of what we are complaining about already falls into the category of illegal faxes. Certainly, most of what I get comes from places I never heard of, and certainly not from companies with which I have an established business relationship. They were illegal before the FCC acted. They will be illegal after July 1. And they will continue to flow illegally after July 1, while legitimate commerce either abandons fax communication or absorbs a major and wasteful cost. Meanwhile, the junk faxers will continue to pursue their trade.

#### 4. How newspapers use faxes

I would like to give this committee a better sense of how we use the facsimile machine.

##### A. Rate cards and market information requests

We send information about the newspaper and website ad rates to those who request them every day. These are business requests for information about our newspaper and website advertising rates, information about upcoming special sections, market information about circulation numbers and distribution zones, and more. The signed consent fax rule would stop our advertising department in its tracks every day. Maybe every hour. Since more than 80 percent of our revenue is generated by that department, it's pretty important.

In the past year we ran advertisements for 5,225 different customers. Some ran only one ad in that year; some ran several each week. Many times that number of potential customers telephone for information because they are considering running ads in our market. Also, many of our customers have multiple decision makers from a local store, regional headquarters, national headquarters, buying service, advertising agency, etc. It is no exaggeration to suggest that our small company would be required to maintain a FAX approval file with nearly 20,000 FAX numbers if we had to comply with this rule.

These requests require the fax machine. Most advertising decisions are very time-sensitive. Since customers and potential customers need information quickly, they routinely ask us to FAX information to them rather

than mail it. That information might be a rate card, information on a special edition, market demographics, deadline reminders or credit forms. E-mails sometimes are a nice substitute, but there are many problems with e-mail attachments. Many businesses still don't have e-mail, but they all have fax machines. When people request information, they want a hard copy now, without having to figure out e-mail attachments.

## B. Special sections

The bread and butter of a community newspaper is its special section calendar. In that sense, we may be a little like magazines. We cover the routine city council and school board news, but we also publish special sections that interest particular segments of our advertising clients and our subscribers. Our subjects range from bridal guides to sports reviews, from back-to-school to holiday gifts, from health and fitness to home and gardens, from economic development to community heritage.

Among our 5,000-plus customers, many advertise with us only when one of these sections is available. A bridal shop, for example, could miss the single best marketing week of the season if it misses out on our special section announcement. Why do we fax it? Because the advertisers prefer to receive it that way. They don't have time to scroll through a hundred emails a day, and the mailbox contains a similar amount of material they don't want. The fax gets to them quickly and gives them what they need.

## C. Advertising proofs

I know that in Washington, DC, most advertising is created by fancy agencies that do the work for a fee. In McMinnville, the advertising agency

for most small businesses is the News-Register. A business may phone and talk out an ad concept by phone, but the owner wants to see it before it is published — to make changes, sign off, have time to prepare point of purchase materials that may be integrated with the newspaper piece.

The fax machine is the only realistic way to get that proof to a small business. The email route creates many problems with applications and attachments. We use a sophisticated design program that few non-advertising businesses keep on their own machines. If we send them the proof in the native application, they can't open it. If we send it in Adobe Acrobat, they usually can't edit it, and sometimes they can't even open it. If they don't have a computer, or their computer is on the blink, or the guy who usually runs it is gone that day, they are sunk. So they want a fax. The other choice is for someone to drive the proof to a customer, but that creates tremendous costs in manpower and fuel, as in pre-FAX days.

#### D. Invoices and bookkeeping

We send monthly statements to our advertisers. Those travel by mail. Often, however, advertisers call with questions, requests for adjustments, extra copies and so forth. Those often travel by fax. And since they concern advertising, I would assume the Commission would expect us to have consent forms before we sent them.

#### E. Other uses

A host of other creative ways are used in small towns to keep people informed. For example, NNA's member, the semi-weekly Wise County

Messenger in Decatur, TX, has a daily fax newspaper “Update” that is distributed to about 1,000 of its business and residential subscribers, with news and advertising promotions that break between weekly editions.

Finally, many of our members provide a public fax service. By that I mean that they may own the only fax machine in town that is available for public use. That is critical, particularly for senior citizens who may not have an office where a fax machine is available. These newspapers—usually in small towns—permit citizens to come in and use it as needed. This is a practice that would surely come to an end under the FCC rule because citizens would not commonly possess the signed consent forms. The publishers could not risk the liability of improper use, and they would not want to generate ill will with their customers by trying to explain all the new rules of faxing.

## 5. The Compliance Cost

The principal concern with the signed consent rule is the Compliance cost. I mentioned the size of database we would need to set up as a tracking system for our group of businesses. While my company is among the larger ones in the community newspaper industry with about 120 employees, many of NNA’s members have fewer than 10 employees.

The Commission has asked us to set up an entire system to interfere with our busy customers' lives so we can get these forms, and to repeatedly bother them to keep the forms up to date. I'm going to borrow from my colleague, Cheryl Kaechele, who described the burden of compliance last summer when she testified before the House of Representatives about this rule.

"Here is what I believe most of my publisher colleagues would have to do, in order to comply with this rule:

- 1) Acquire or upgrade a database program;
- 2) Mail out, or hand carry, several thousand consent forms;
- 3) Explain over and over, at the post office, at the golf course, at church, standing in the school parking lot, that, yes, we really must have these forms back;
- 4) Send someone out again to get some of them back;
- 5) Send someone out yet again to get some of them back;
- 6) Explain over and over on the phone, 'no, we can't fax you the ad rates, because you forgot to send your form back.'
- 7) Apologize to an irate customer, while standing in the post office or in the school parking lot;
- 8) Send someone out still again to get some of them back.
- 9) Hire someone to file them, make a note of them in the database, and remember to check them periodically to make sure nothing has changed, and then...
- 10) Send someone out again to get new forms back.

"You get the picture. It is going to require, in all probability, hiring someone to do this work. Or it will require shifting someone from selling ads or writing stories to take on this new task." (Testimony of Cheryl Kaechele, Publisher of Allegan County (MI) News, before the House Subcommittee on Telecommunications and the Internet, June 15, 2004.)

Really, what Cheryl is saying, is that the FCC is requiring us to spend a lot of time and money, and our customers' time and money,

getting customers to do what they don't want to do — drop everything to sign yet another form. And for what? To stop junk fax? It won't stop junk fax. But it would hurt a lot of small businesses.

NNA doesn't do a lot of survey work. Our association is small, and surveys can be quite costly. But we did ask members to give us a sense in 2003 of the cost they anticipated for compliance. Most of them told us they would be spending the equivalent of a half-time staff position to comply. This is a cost, for many small weeklies, that makes the difference between a profitable year and a loss.

#### 6. The threat of litigation

One of the most awesome and harmful aspects of the signed consent rule is the obvious threat that it leaves hanging over every small business. Fax numbers change. We may forget to file a form, or lose it. Someone with apparent authority to sign a form might never tell the boss, and then resign without our knowing the situation has changed. What is probably most worrisome to those of us in the journalism business is that people can change their minds about us overnight because of something we wrote.

Certainly, we comply today with do-not-call and do-not-send requests. We get very few. And 99 percent of the time, we know for a fact that the faxes we send are going to people who want them. But in that

troubling 1 percent margin of error may lurk the angry politician or community activist who disagreed with something I wrote in an editorial — and suddenly spies a fax from our marketing department on the table. Aha. Maybe we don't have the signed consent form! And here comes a lawsuit. Will we have the form? Will we find it in time? Will I have to pull Marketing off their campaign of the week to prepare a defense? And if we've messed up that time, will we pay, even though we know — and the recipient in all honesty knows — the issue isn't about the fax at all? If you think that doesn't happen to newspapers, come sit in my office for a day when there is a local zoning dispute or controversial referendum on the table.

7. S. 714 takes a sensible approach.

This bill gives us some breathing room and restores the sensible flow of commerce on the fax machine.

It recognizes the importance of established business relationships.

It requires us to tell customers how to stop future faxes from coming.

It makes us responsible to demonstrate that we had the consent to send, should a dispute arise — as we have that responsibility today.

It tasks the regulators with looking closely at where the real problem comes from. I don't think the FCC will decide, if it looks closely, that most

of the junk fax is coming from us, or any other business that expects to maintain a solid relationship with its customers. Like spam, it comes from those who use the new technologies of our age to latch onto the low barriers to entry in business. They are trying to make a buck without going to the trouble of building a respectable business around respectable business practices.

As an Internet company owner, I can assure you that efforts to stop spam by regulating our responsible use haven't made a dent in that practice. The signed consent rule will do no better with faxes. The solutions are found in transparency, sound enforcement, and education of consumers on how to do business with people they can trust. When spam and junk fax cease to be profitable, they will cease to exist.

Congress can do a lot to improve the transparency and sound enforcement. S. 714 takes a solid and sound step in that direction, and I am delighted to declare the support of our organization for it. We look forward to working with this committee for quick passage of this legislation.