

Intrusive marketing

# 'Junk fax' bill belongs in trash

CYNICAL LEGISLATION WOULD ROLL BACK LAW THAT SHIELDS CONSUMERS

Only in Congress can a bill called the "Junk Fax Prevention Act" be designed to unleash a flood of junk faxes on unsuspecting consumers.

The bill, which was introduced last week, would gut a ban on junk faxes enacted by Congress in 1991. It's a cynical attempt to roll back one of the few powerful laws that have shielded American consumers from intrusive marketing. It deserves a quick and decisive death.

Junk faxes are advertising by theft. They once crippled fax machines across America, forcing individuals and small businesses to pay — in paper, toner and tied-up fax machines — for ads they didn't want.

Despite some ongoing abuse, the 1991 law has greatly reduced

the onslaught of junk faxes. What's more, the law has survived multiple constitutional challenges, making it a powerful model for possible anti-spam and anti-telemarketing legislation.

For years, the Federal Communications Commission, which was charged with interpreting the law, had mistakenly carved out an exemption to the junk-fax ban: Businesses that had an "established business relationship" with a customer were allowed to send unsolicited ads to that customer's fax machine.

But courts have repeatedly rebuked the FCC, saying that Congress had not authorized the carve-out. Last year, the commission finally agreed to draft new rules, which would go into effect in January 2005. They would end



the carve-out and require businesses to obtain written permission before sending an ad to a customer's fax machine.

The business community went into a tizzy — with some justification. Requiring written permission goes too far. Consumers should be able to request a fax

## TO MAKE AN ANTI-FAX CALL

**Fred Upton** is chairman of the House Energy and Commerce Subcommittee on Telecommunications and the Internet. The Energy and Commerce Committee does not have a public fax number. "We get junk faxes all the time," a committee staffer said.

To get involved, you can call Upton's office at 202-225-3761.

Or contact subcommittee member **Anna Eshoo**, D-Palo Alto, at 650-323-2984 or [annagram@mail.house.gov](mailto:annagram@mail.house.gov) and urge her to vote against the bill.

quote from a mortgage broker over the phone, for example.

But rather than let the FCC come up with more flexible alternatives, Rep. Fred Upton, R-Mich., seized the opportunity to enshrine the carve-out for established business relationships in the law.

Under his bill, HR 4600, any business you've ever walked into, visited online, called or bought from would be exempt from the ban. Unless you specifically asked them not to, they'd be allowed to track down your fax number from a directory and start bombarding your fax machine with ads. Fax marketers would be back in business, with a vengeance.

Last year, a popular outcry against telemarketers got Congress' attention. In 24 hours, it passed a law mandating the "do not call" registry. It's time for another popular outcry, this time against Upton's bill. If nothing else, maybe Upton can be persuaded to find a more honest name for the legislation. How about the "License to Advertise by Theft Act"?