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For Immediate Release

FCC REJECTS PETITION TO RECONSIDER \$1.84 MILLION FINE

Parties Ignored Warnings, Bombarded Health Care Offices with Unsolicited Fax Advertisements, Ignored Complaints, & Responded Months After Deadline

WASHINGTON, February 15, 2018—The Federal Communications Commission today rejected a petition to reconsider a \$1.84 million fine for violations of FCC junk fax rules. Scott Malcolm and his companies DSM Supply and Somaticare were found to have sent unsolicited fax advertisements about which the Commission received hundreds of consumer complaints. Mr. Malcolm's violations of the Telephone Consumer Protection Act were numerous, egregious, and occurred after being warned that he was violating the law.

In response to the FCC's 2016 fine, Mr. Malcolm petitioned the agency for reconsideration of the fine, claiming that it was excessive. The Commission rejected the petition on procedural grounds, because Mr. Malcolm could have made that argument in earlier responses to Commission warnings but failed to do so. Commission rules generally provide for reconsideration only when the petitioner presents new facts that were not available prior to the issuance of the fine. The Commission also found that Mr. Malcolm had not presented evidence sufficient to demonstrate that the forfeiture was excessive in violation of the Eighth Amendment.

Following numerous consumer complaints, the Commission cited Mr. Malcolm for violations of the law. Violations continued after this notice and formed the basis for the Commission's fine. Mr. Malcolm was asked to provide any evidence related to and arguments against the proposed fine. His response arrived nearly seven months after the deadline. Following review of this response, the agency issued its forfeiture order. Mr. Malcolm then petitioned for reconsideration, which is denied.

Enforcement of FCC rules promotes orderliness and finality in the administrative process and thereby serves the public interest and promotes the efficient use of Commission resources. The law does not require the Commission to be administratively burdened by petitions for reconsideration that reargue issues that were already addressed or that rely on facts or arguments that the petitioner could have—but did not—present to the Commission at an earlier stage.

The Order on Reconsideration is available at:

https://apps.fcc.gov/edocs_public/attachmatch/FCC-18-14A1.pdf

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This is an unofficial announcement of Commission action. Release of the full text of a Commission order constitutes official action. See MCI v. FCC, 515 F.2d 385 (D.C. Cir. 1974).