



# PUBLIC NOTICE

Federal Communications Commission  
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Washington, D.C. 20554

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## CONSUMER AND GOVERNMENTAL AFFAIRS BUREAU SEEKS COMMENT ON M3 USA CORP. PETITION FOR DECLARATORY RULING UNDER THE TELEPHONE CONSUMER PROTECTION ACT OF 1991

CG Docket No. 02-278  
CG Docket No. 05-338

**Comment Date:** April 27, 2017  
**Reply Comment Date:** May 15, 2017

With this Public Notice, we seek comment on a petition for declaratory ruling filed by M3 USA Corporation (Petitioner).<sup>1</sup> Petitioner requests that the Commission clarify “that research survey invitations [sent by facsimile machine] do not constitute ‘advertisements’”<sup>2</sup> under the Telephone Consumer Protection Act (TCPA).<sup>3</sup> Specifically, Petitioner requests that the Commission clarify that, under the TCPA: (1) there is “no presumption” that faxes are pretexts for advertisements when sent by for-profit businesses; (2) informational faxes are not pretexts for advertisements unless they promote “specific, commercially-available property, goods or services to the recipient”; (3) “market research surveys do not constitute property, goods or services vis-à-vis the persons taking the surveys”; and (4) “[i]nvitations to participate in market research surveys are not advertisements unless commercially-available property, goods or services are promoted in the fax itself or during the survey itself.”<sup>4</sup> Petitioner also seeks clarity regarding the meaning of “pretext” in determining whether a survey is a pretext to an advertisement under the Commission’s fax advertising rules.<sup>5</sup>

We seek comment on these and any other issues raised by the petition.

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<sup>1</sup> Petition of M3 USA Corporation for Expedited Declaratory Ruling, CG Docket No. 02-278 (filed Mar. 20, 2017) (*Petition*).

<sup>2</sup> *Id.* at 1.

<sup>3</sup> The TCPA is codified at 47 U.S.C. § 227. The Commission’s implementing rules are codified at 47 CFR § 64.1200. Among other things, the TCPA and the related rules prohibit the use of a “telephone facsimile machine, computer, or other device” to send an unsolicited advertisement to a telephone facsimile machine. 47 U.S.C. § 227(b)(1)(C); 47 CFR § 64.1200(a)(4).

<sup>4</sup> *Petition* at 22.

<sup>5</sup> *Id.* at 9. The *Petition* notes that the Commission has said “that any surveys that serve as a pretext to an advertisement are subject to the TCPA’s facsimile advertising rules.” *Id.* at 9 (citing *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991; Junk Fax Prevention Act of 2005*, CG Docket Nos. 02-278, 05-338, Report and Order and Third Order on Reconsideration, 21 FCC Rcd 3787, 3815, para. 54 (2006)).

*Comments and Reply Comments.* Pursuant to sections 1.2 of the Commission's rules, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document.<sup>6</sup> Comments may be filed using: (1) the Commission's Electronic Comment Filing System (ECFS); or (2) by filing paper copies.

- **Electronic Filers:** Comments may be filed electronically using the Internet by accessing ECFS: <https://www.fcc.gov/ecfs/>. Filers should follow the instructions provided on the website for submitting comments.
- **Paper Filers:** Parties who choose to file by paper must file an original and one copy of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
  - All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12<sup>th</sup> St., SW, Room TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes or boxes must be disposed of *before* entering the building.
  - Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
  - U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12<sup>th</sup> Street, SW, Washington DC 20554.

Comments and reply comments filed in response to this Public Notice will be available via ECFS. These documents also will be available for public inspection during regular business hours in the FCC Reference Information Center, Portals II, 445 12<sup>th</sup> Street S.W., Room CY-A257, Washington, D.C. 20554.

*Accessibility Information.* To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer and Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY).

*Ex Parte Rules.* This proceeding shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.<sup>7</sup> Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must: (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made; and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda, or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be

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<sup>6</sup> 47 CFR § 1.2.

<sup>7</sup> See 47 CFR §§ 1.1200 *et seq.*

found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with section 1.1206(b) of the Commission's rules.<sup>8</sup> In proceedings governed by section 1.49(f) of the rules or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.*, .doc, .xml, .ppt, searchable .pdf).<sup>9</sup> Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

*Additional Information.* For further information, contact Karen Schroeder of the Consumer and Governmental Affairs Bureau, at (202) 418-0654 or [Karen.Schroeder@fcc.gov](mailto:Karen.Schroeder@fcc.gov).

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<sup>8</sup> 47 CFR § 1.1206(b).

<sup>9</sup> 47 CFR § 1.49(f).