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February 19, 2018

Marlene H. Dortsch, Secretary  
Federal Communications Commission  
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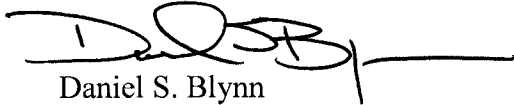
Re: Petition for Expedited Declaratory Ruling, CG Docket No. 02-278

Dear Ms. Dortsch:

On behalf of Inovalon, Inc., please find submitted herewith an original and four copies of a Petition for Expedited Declaratory Ruling in the above-referenced docket for filing. I am providing an additional copy and postage pre-paid return envelope with the request that the copy be stamped and returned to me.

Please let me know if you have any questions. Thanks in advance.

Sincerely,



Daniel S. Blynn

Enclosures

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**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

In the Matter of Inovalon, Inc.'s )  
Petition for Expedited Declaratory Ruling )  
 ) CG Docket No. 02-278  
 )  
Rules and Regulations Implementing the )  
Telephone Consumer Protection Act of 1991 )

**PETITION FOR EXPEDITED DECLARATORY RULING  
CLARIFYING UNSOLICITED ADVERTISEMENT PROVISION OF TELEPHONE  
CONSUMER PROTECTION ACT AND JUNK FAX PREVENTION ACT**

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February 19, 2018

## **EXECUTIVE SUMMARY**

Inovalon, Inc. (“Inovalon”) is a cloud-enabled technology company empowering the transformation to value-based healthcare. Having brought together a uniquely integrated platform comprised of extensive healthcare ecosystem connectivity, large-scale real-world clinical datasets, sophisticated analytics, and ultra high-speed compute architectures, Inovalon provides a highly flexible, native cloud-based Platform-as-a-Service capability to health plan, provider system, pharmaceutical, and device manufacturer adjacencies.

Inovalon is retained by health plans, on a regional and national level, to deliver solution platforms that drive an effective determination and substantiation of disease and comorbid condition data. Collecting patients’ medical records from healthcare providers is one step in the broader solution platform process and Inovalon provides multiple submission method options for providers to provide requested medical records, including by electronic health record (“EHR”) interconnectivity, remote connections/collaborative retrieval, fax, and onsite retrieval. Once Inovalon has collected the patients’ records, they are scanned and digitized (if they are not already in such form), and the patient’s electronic health record is utilized to close gaps in assessment, provider disease burden documentation, and care for Medicare, Medicaid, and commercial Affordable Care Act populations in a targeted and efficient manner. In order to collect patients’ medical records efficiently and with minimal interruption to the health providers’ business operations, Inovalon offers electronic health record interconnectivity.

A medical provider has a contract with the health plan on whose behalf Inovalon acts. Inovalon acts as the health plans’ designee when it contacts the providers. Inovalon currently does not offer any commercially available EHR product or service to the providers who receive its faxes; rather, it simply offers free, “no cost” collection and digitization services paid for by

the health plans. The faxes are purely informational and serve to enhance patient care and the practice of medicine more generally. They are not actionable “unsolicited advertisements” under the Telephone Consumer Protection Act (“TCPA”).

Despite this, Inovalon recently has found itself targeted in a Junk Fax Prevention Act class action arising out of a single fax it sent to a medical provider as part of its efforts to collect patient records. The plaintiff seeks at least \$5 million in damages on behalf of a nationwide class of fax recipients. In broad and conclusory terms, the plaintiff incorrectly claims that Inovalon “profit[s] and benefit[s] from the sale of the products, goods and services advertised” in its faxes without explaining what makes the fax at issue an alleged advertisement in the first instance. The complaint seeks to impermissibly broaden the TCPA’s definition of “advertisement” and exploit conflicting court decisions as to what constitutes an advertisement under the Act. The practical result is uncertainty among industry and the general public, substantial legal exposure and risk for any participant in the medical industry, and the chilling of important health-related communications.

Therefore, Inovalon respectfully requests an expedited declaratory ruling from the Commission that confirms that faxes sent by the designee of a health plan to a patient’s medical provider, pursuant to an established business relationship between the health plan and provider, requesting patient medical records are not “unsolicited advertisements.” Accordingly, the Commission should declare that:

1. Faxes sent by a health insurance plan’s designee to a patient’s medical provider, pursuant to an established business relationship between the health plan and provider, requesting patient medical records are not advertisements under the TCPA; and
2. Faxes that offer the free collection and/or digitization of patient medical records, and which do not offer any commercially available product or service to the recipients are not advertisements under the TCPA.

These requested rulings are consistent with the Commission's previous orders regarding what constitutes an advertisement under the TCPA and the legislative intent and purpose of the TCPA, and, moreover, promote beneficial patient health communications.

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Pursuant to Section 1.2 of the Rules of the Federal Communications Commission (“FCC” or “Commission”),<sup>1</sup> Inovalon, Inc. (“Inovalon”) respectfully petitions the Commission for an expedited declaratory ruling clarifying that requests made by a health insurance plan’s designee to a patient’s doctor or other medical professional (who has provided his, her, or its telephone number to the health plan in the first instance) seeking the patient’s medical records do not constitute “advertisements” under the Telephone Consumer Protection Act (“TCPA”), as amended by the Junk Fax Prevention Act of 2005 (“JFPA”), especially where the requests represent that the medical provider can take advantage of “no cost” medical record digitization services to supply those records, and the health plan’s designee offers no commercially available products or services to the provider. A declaratory ruling from the Commission is necessary to eliminate judicial confusion over what constitutes an actionable “unsolicited advertisement” under the JFPA, and to provide certainty and clarity to the industry and members of the public.

In addition, a declaratory ruling will help ebb the rising tide of professional litigants and plaintiffs’ attorneys who target such types of informational communications to leverage the prospect of massive TCPA damages awards into multi-million dollar settlements of baseless class action litigation. These types of litigations chill important patient health communications – communications that the TCPA was never intended to cover in the first instance.

Accordingly, in order to provide clear guidance to the courts and the public, the FCC should declare that:

1. Where an established business relationship exists between a health insurance plan and a medical provider and the provider has given its facsimile number to the health plan, faxes sent by the health plan’s designee to the provider seeking to collect patient health records are not “advertisements” under the TCPA; and

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<sup>1</sup> 47 C.F.R. § 1.2.

2. Faxes that offer free or “no cost” electronic health record collection, and which do not offer any commercially available product or service to the recipients, are not “advertisements” under the TCPA.

## I. INTRODUCTION AND SUMMARY

The fax provision of the TCPA, as amended by the JFPA, generally prohibits “unsolicited advertisements” from being sent to U.S. fax machines unless: (a) the sender has an existing business relationship with the recipient, (b) the recipient provided his or her fax number voluntarily, and (c) the fax contains a notice with certain statutorily-prescribed contents.<sup>2</sup> The lack of clarity surrounding what constitutes an “advertisement” has facilitated a rise in abusive litigation that has distorted the TCPA beyond recognition and discourages legitimate businesses from engaging in lawful communications. Inovalon itself is facing such a lawsuit, and wishes to obtain a definitive ruling from the Commission that Inovalon’s practice of sending faxes to recipients that have contractually agreed to receive them (and for which Inovalon is merely acting as a middle-man) is not unlawful. Further, Inovalon seeks a declaratory ruling that its faxes to medical service providers, which offer “no cost” electronic health record extraction services are not “advertisements” under the JFPA – this being especially true given that Inovalon offers no commercially available product or service to the recipients of such faxes. Inovalon also submits that such declaratory rulings will help curtail the rising tide of abusive litigation and save other would-be defendants from similar time and expense while simultaneously providing clear rules that will maintain lawful and important communications.<sup>3</sup>

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<sup>2</sup> 47 U.S.C. § 227(b)(1)(C).

<sup>3</sup> Inovalon seeks a declaration that somewhat overlaps with that sought by M3 USA Corporation in its March 20, 2017 Petition for Expedited Declaratory Ruling (*available at <https://ecfsapi.fcc.gov/file/10321896504076/M3%20Petition%20for%20Declaratory%20Ruling.pdf>*) (hereinafter “M3 USA Petition”). Although M3 USA’s petition seeks a ruling that double-blind informational surveys are not property, goods, or services, and that fax invitations to complete such surveys are not “advertisements” for TCPA



## **II. BACKGROUND ON PETITIONER**

### **A. Inovalon's Services and Business Model**

Inovalon contracts with health plans, provider systems, pharmaceutical, and device manufacturer agencies to collect and analyze patient health data. Medical providers, through their contracts with the insurance companies, consent to provide patient medical information to insurers; they provide their contact information, including facsimile numbers, to the insurers. The respective insurance companies, in turn, provide data to Inovalon that contains provider information, and Inovalon, then, contacts the providers, as a designee of each respective insurance company, to verify the provider's site address and contact information, including fax number, and to retrieve patients' health records. Depending on the provider and the records to be retrieved, Inovalon informs the providers how the records may be collected; for example, Inovalon can come to the provider's office to create a digital image of the medical record. The most efficient way to collect the necessary data from providers is by using electronic health records ("EHRs"). EHRs are a digital version of a patient's paper chart; they are real-time, patient-centered records that make information available instantly and securely to authorized users. Through the use of Inovalon's EHR Interoperability solution, Inovalon can collect patient data from providers through a HIPAA-compliant connectivity gateway process without having to be physically present in their offices, minimizing disruption to the providers and their patients with the simultaneous goal of minimizing health care costs.

Medical providers who do not respond to initial requests may receive a fax from Inovalon, promoting the use of Inovalon's EHR Interoperability solution as a way for providers to comply with their obligations to transmit patient records in an efficient, cost-effective manner.

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purposes, the overarching request of both petitions is similar – clarity regarding the meaning of “advertisement” so as to curtail abusive TCPA litigation. For that reason, Inovalon incorporates by reference sections I.B.1, II.A, II.B, II.C and II.D.3 of the M3 USA Petition.

Inovalon receives no money or sales from the providers' use of the EHR Interoperability solution. The EHR system is merely one way for providers to supply patient information to Inovalon, as required by their contracts with the insurance companies. The providers contractually consent to be contacted by health plans to obtain patient health records, and the health plans delegate this function to Inovalon. Inovalon receives no compensation from providers for using EHR, nor does it currently market its EHR Interoperability solution to providers.

### **B. Pending TCPA/JFPA Litigation Against Inovalon**

On December 26, 2017, Plaintiff Eric B. Fromer Chiropractic, Inc. ("Fromer") filed a putative class action against Inovalon and its corporate affiliates in the U.S. District Court for the District of Maryland, alleging that a single fax received on November 14, 2017 constituted an unsolicited advertisement in violation of the JFPA.<sup>4</sup> From that single fax, Fromer seeks to represent a class of persons who received faxes from Inovalon, "whether sent to Plaintiff or not,"<sup>5</sup> and seeks at least \$5 million in statutory damages under the TCPA. Rather than pleading a plausible explanation as to how Inovalon's fax constitutes an "advertisement," the Complaint alleges a rote recitation of the TCPA's statutory language.<sup>6</sup> Fromer's reasons for omitting this crucial allegation are two-fold.

First, Fromer is a frequent JFPA plaintiff. Fromer's suit against Inovalon is its fifth TCPA/JFPA suit filed in federal court over the past three years.<sup>7</sup> Its complaints have a notable

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<sup>4</sup> *Eric B. Fromer Chiropractic, Inc. v. Inovalon Holdings, Inc., et al.*, No. 8:17-cv-03801-GJH, Compl. (D. Md. Dec. 26, 2017) (Dkt. 1) (hereinafter, "Complaint").

<sup>5</sup> Compl. at ¶ 4.

<sup>6</sup> Compl. at ¶ 2 ("The Fax describes the commercial availability or quality of Defendants' products, goods and Services.").

<sup>7</sup> *Eric B. Fromer Chiropractic, Inc. v. Lordex, Inc., et al.*, No. 2:14-cv-07771-AB-MAN, Compl. (C.D. Cal. Oct. 7, 2014) (Dkt. 1); *Eric B. Fromer Chiropractic, Inc. v. Spendwell Health, Inc., et al.*, No. 2:14-cv-08728,

assembly-line, cut-and-paste quality, and all allege receipt of one or two faxes. Each unsolicited fax Fromer receives that facially lacks the opt-out language required for an *advertisement* appears to trigger a knee-jerk reaction that sends Fromer running to court, without much thought for the specific context of the particular communication. Indeed, that is particularly true with respect to its case against Inovalon where, during a recorded September 7, 2017 telephone conversation between Inovalon and Fromer during which Inovalon confirmed contact information and hours of operation for Fromer's site, Fromer voluntarily provided its fax number to Inovalon as a "good fax number for [its] location." Second, Fromer loses on the merits were it to actually allege the true character of the fax – a transactional message in the context of an ongoing contractual relationship between medical providers and health plans. Even if the November 14, 2017 fax fell outside the TCPA's established business relationship exception, it still would not expose Inovalon to liability because it is not an "advertisement"; indeed, it advertised nothing to Fromer and had no commercial purpose.

Inovalon intends to raise these and additional arguments in defending itself against Fromer's allegations. Nevertheless, Inovalon petitions the Commission to clarify the meaning of an "advertisement" under the TCPA and JFPA in order to resolve conflicting decisions in the courts, and to help curb this breed of abusive TCPA litigation in the future.

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Compl. (C.D. Cal. Nov. 10, 2014) (Dkt. 1); *Eric B. Fromer Chiropractic, Inc. v. N.Y. Life Ins. & Annuity Corp., et al.*, No. 2:15-cv-4767, Compl. (C.D. Cal. June 24, 2015) (Dkt. 1); *Eric B. Fromer Chiropractic, Inc. v. Molina Healthcare of Cal., et al.*, No. 2:15-cv-6403, Compl. (C.D. Cal. Aug. 21, 2015) (Dkt. 1) (alleging receipt of five faxes). These four suits have ended in three voluntary dismissals – likely stemming from individual settlements – and one class settlement with a common fund of \$1.1 million. Fromer's counsel sought an award of \$319,000 of that total and Fromer requested \$15,000 as an incentive payment for simply lending its name to the complaint. See *N.Y. Life Ins. & Annuity Corp.*, Order Re: Pl.'s Mot. for Final Approval of Class Action Settlement and Mot. for Award of Attorneys' Fees (Dkt. 83).

### III. STATUTORY LANGUAGE AND FCC GUIDANCE

#### A. The Prohibition on Unsolicited Advertisements

47 U.S.C. § 227(b)(1)(C) makes it “unlawful for any person within the United States, or any person outside the United States if the recipient is within the United States . . . to send, to a telephone facsimile machine, an unsolicited advertisement, unless” (1) the sender has an established business relationship with the recipient, (2) the sender obtained the recipient’s fax number in certain ways, and (3) the message contains certain statutorily prescribed opt-out language.<sup>8</sup>

#### B. Transactional Messages Are Not Advertisements

The TCPA regulates “unsolicited advertisement[s],” defined as “any material advertising the commercial availability or quality of any property, goods, or services which is transmitted to any person without that person’s prior express invitation or permission, in writing or otherwise.”<sup>9</sup> The FCC has explained that “unsolicited advertisements” do not include “transactional” communications, which are “messages whose purpose is to facilitate, complete, or confirm a commercial transaction that the recipient has previously agreed to enter into with the sender . . .”<sup>10</sup> After examining a number of examples of these transactional messages that fall outside the definition of an “unsolicited advertisement,”<sup>11</sup> the FCC distilled the common thread among

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<sup>8</sup> It bears noting that, last year in *Bais Yaakov of Spring Valley v. FCC*, 852 F.3d 1078 (D.C. Cir. 2017), the D.C. Circuit held that solicited facsimile advertisements do not need to contain opt-out notices.

<sup>9</sup> 47 U.S.C. § 227(a)(5); accord 47 C.F.R. § 64.1200(f)(1) (defining advertisement as “any material advertising the commercial availability or quality of any property, goods, or services”).

<sup>10</sup> *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991; Junk Fax Prevention Act of 2005*, Report & Order & Third Order on Reconsideration, 21 FCC Rcd 2787, 3812-12, ¶ 49 (2006) (“Junk Fax Order”).

<sup>11</sup> These examples include “a receipt or invoice, the primary purpose of which is to confirm the purchase of certain items by the facsimile recipient, . . . messages containing account balance information or other type of account statement which, for instance, notify the recipient of a change in terms or features regarding an account, subscription, membership, loan or comparable ongoing relationship, in which the recipient has already purchased or is currently using the facsimile sender’s product or service, . . . c]ommunications sent to facilitate a loan transaction,

them: exempted messages “must relate specifically to existing accounts and ongoing transactions.”<sup>12</sup> By contrast, “[m]essages regarding new or additional business would advertise ‘the commercial availability or quality of any property, goods, or services . . .’ and therefore would be covered by the prohibition.”<sup>13</sup>

In determining whether a particular communication is an advertisement, the FCC looks to its “primary purpose.”<sup>14</sup> Incidental or *de minimis* advertising, such as the inclusion of a sender’s logo or business slogan, does not convert an otherwise transactional communication to an advertisement by virtue of those elements.<sup>15</sup> Mere “reference to a commercial entity does not by itself make a message a commercial message.”<sup>16</sup>

### C. Informational Messages Are Not Advertisements Unless They Are Pretextual

Part of the “primary purpose” analysis involves evaluating whether the purportedly transactional communication is actually mere pretext for an advertisement. According to the FCC, “facsimile messages that promote goods or services even at no cost, such as free magazine subscriptions, catalogs, or free consultations or seminars, are unsolicited advertisements” because they (1) are mere pretext, or (2) form part of an overall marketing campaign.<sup>17</sup> By

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such as property appraisals, summary of closing costs, disclosures (such as the Good Faith Estimate) and other similar documents . . . when their purpose is to complete the financial transaction[,] . . . [a] travel itinerary for a trip a customer has agreed to take or is in the process of negotiating[,] . . . a contract to be signed and returned by the agent or traveler that is for the purpose of closing a travel deal[,] . . . [a] communication from a trade show organizer to an exhibitor regarding the show and her appearance . . . , provided the exhibitor has already agreed to appear[,] . . . a mortgage rate sheet sent to a broker or other intermediary or a price list sent from a wholesaler to a distributor (e.g., food wholesaler to a grocery store) for the purpose of communicating the terms on which a transaction has already occurred[,] . . . [a] subscription renewal notice . . . , provided the recipient is a current subscriber and had affirmatively subscribed to the publication[,] [and] a notice soliciting bid proposals on a construction project . . . , provided the notice does not otherwise contain offers for products, goods, and services.” Junk Fax Order at ¶ 49.

<sup>12</sup> Junk Fax Order at ¶ 50.

<sup>13</sup> Junk Fax Order at ¶ 50.

<sup>14</sup> Junk Fax Order at ¶ 51.

<sup>15</sup> Junk Fax Order at ¶¶ 51-52.

<sup>16</sup> Junk Fax Order at ¶ 51.

<sup>17</sup> Junk Fax Order at ¶ 52.

contrast, purely informational communications, or those whose primary purpose is to communicate information (even in the presence of incidental advertising) are not considered advertisements.<sup>18</sup> This includes “industry news articles, legislative updates, or employee benefit information,” and informational newsletters.<sup>19</sup>

#### IV. ARGUMENT

##### A. The FCC is Authorized to Issue a Declaratory Ruling Providing Additional Clarification on the Meaning of an “Advertisement”

The FCC is the agency entrusted by Congress as the expert on the TCPA,<sup>20</sup> and is empowered to use its “sound discretion [to] issue a declaratory order to terminate a controversy or remove uncertainty.”<sup>21</sup>

##### B. A Declaratory Ruling is Needed to Resolve Conflicting Decisions in the Courts, Provide Clarity to the Public, and Curtail Abusive TCPA Litigation

Companies not only take their cues from statutory and regulatory language and FCC Guidance, but increasingly chill their behavior for fear of attracting the attention of aggressive plaintiffs’ lawyers and risking millions of dollars in liability in specious, manufactured TCPA lawsuits. In a similar petition seeking a declaration that informational surveys are not advertisements for TCPA purposes, M3 USA Corporation succinctly summarized the problem.

The uncertainty as to what is and is not a fax advertisement has harmed, and continues to harm, legitimate businesses carrying out legitimate and lawful business plans. . . . It has chilled legitimate and beneficial communications and has allowed plaintiffs’ lawyers to hold companies hostage – oftentimes for millions of dollars – simply by virtue of the *in terrorem* effect of putative TCPA class actions in which class members are entitled to statutory damages of \$500 or \$1,500 *per violation*, even in the absence of actual harm. . . . [G]iven the enormous exposure created by the TCPA, the professional plaintiffs’ bar and the

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<sup>18</sup> Junk Fax Order at ¶ 53.

<sup>19</sup> Junk Fax Order at ¶ 53.

<sup>20</sup> *In re Rules & Regulations Implementing the Tel. Consumer Prot. Act of 1991, et al.*, Order, 31 FCC Rcd 11943, 11949 ¶ 12 (Cons. & Gov’t Affairs Bur. 2016).

<sup>21</sup> 5 U.S.C. § 554(e).

uncertainty surrounding the definition of “advertisement,” multi-million dollar settlements have become a distressingly routine means for legitimate businesses to mitigate the risk and exposure of abusive class actions under the TCPA.<sup>22</sup>

A simple review of recent decisions examining the meaning of “advertisement” in TCPA cases reflects confusion among the lower courts, and professional plaintiffs’ ability to exploit that lack of clarity. *Compare Physician’s Healthsource, Inc. v. Boehringer Ingelheim Pharmaceuticals, Inc.*, 847 F.3d 92 (2d. Cir. 2017) (applying a presumption of profit motive at the motion to dismiss stage, holding a fax invitation to physicians to attend to a free dinner discussion of a medical condition hosted by a pharmaceutical company constituted an advertisement because “[b]usinesses are always eager to promote their wares and usually do not fund presentations for no business purpose,” and requiring defendant to proceed to discovery to rebut the presumption that it did not intend to promote its products, despite uncontroverted evidence that defendant had no product to treat medical condition at that time and was forbidden by FDA regulations from promoting drugs pending approval); *Arkin v. Innocutis Holdings, LLC*, 188 F. Supp. 3d 1304 (M.D. Fla. 2016) (holding that an otherwise informational fax constituted an advertisement because the information was about a product); *Orrington v. Scion Dental, Inc.*, No. 17-CV-00884, 2017 WL 5569741 (N.D. Ill. Nov. 20, 2017) (refusing to find that faxed webinar invitations were not advertisements as a matter of law, where plaintiff alleged that defendant’s business model depended on signing up dentists to expand its network, and the free webinars were intended to introduce defendant’s software to dentists and enroll them in defendant’s platform, and thus were commercial in nature); *Drug Reform Coordination Network, Inc. v. Grey House Pub., Inc.*, 106 F. Supp. 3d 9 (D.D.C. 2015) (finding a fax offering the recipient a free listing in a forthcoming directory, which was not an unsolicited advertisement

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<sup>22</sup> *In re M3 USA Corp.’s Petition for Expedited Declaratory Ruling*, CG Dkt. No. 02-278, Pet. for Expedited Declaratory Ruling, at 14-16 (FCC Mar. 20, 2017).

“on its face,” was nonetheless unlawful when viewed in the context of later-received emails offering the directory for sale); *with Sandusky Wellness Ctr., LLC v. Medco Health Solutions, Inc.*, 788 F.3d 218, 223 (6th Cir. 2015) (concluding that faxed updates to a prescription drug formulary, advising physicians of generics and other drugs covered under a health plan, were not advertisements because they did not purport to sell anything, but merely to inform physicians of cheaper drug options for patients); *Carlton & Harris Chiropractic, Inc. v. PDR Network, LLC*, No. 3:15-14887 (S.D.W.V. Sept. 30, 2016) (agreeing that a fax offering a free Physician’s Desk Reference eBook was not an advertisement because there was no “commercial aim” where the sender neither sold the book nor the prescription drugs described in the book); *N.B. Indus., Inc. v. Wells Fargo & Co.*, 465 Fed. App’x. 640, 642 (9th Cir. 2012) (holding that for a fax to be an advertisement, it must promote something that is “commercially available”).

Fromer’s complaint is the quintessential “poster child for [TCPA] lawsuit abuse” targeting “legitimate, domestic businesses” that Chairman Pai observed when the TCPA was amended in July 2015.<sup>23</sup> Inovalon is presented with a Catch 22: either spend years potentially litigating – at great financial cost and business interruption – to prevail on the merits, or try to resolve the litigation through what surely will be an expensive class settlement. The only ones who benefit from the litigation are Fromer’s counsel and, potentially, Fromer himself if he seeks \$15,000 as an incentive award through a settlement as he sought in other recent JFPA litigation.<sup>24</sup> On the other hand, “legitimate, domestic businesses,” such as Inovalon suffer, patients whose medical records will not be collected suffer, and important medical communications are chilled by the potential of similarly spurious lawsuits. Thus, the

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<sup>23</sup> *In re Rules & Regulations Implementing the Tel. Consumer Protection Act of 1991*, 30 FCC Rcd. 7961, 8072-73, (2015) (Pai, dissenting).

<sup>24</sup> *See, supra*, n.7.



Commission's interpretation of "advertisement" is paramount.

**V. CONCLUSION**

For the reasons expressed above, Inovalon respectfully asks that the Commission issue a declaratory ruling holding that:

1. Where an established business relationship exists between a health plan company and a medical provider and the provider has given its facsimile number to the health plan, faxes sent by the designees of the health plan to the provider seeking to collect patient health records are not "advertisements" under the TCPA; and
2. Faxes that offer free or "no cost" electronic health record collection, and which do not offer any commercially available product or service to the recipients, are not "advertisements" under the TCPA.

Respectfully Submitted,

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