

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

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

**COMMENTS OF M3 USA CORPORATION**

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M3 USA Corporation (“M3”) submits its support for the petition for declaratory ruling filed on February 19, 2018 by Inovalon, Inc. (the “Petitioner”), requesting that the Federal Communications Commission (the “Commission”) clarify that faxes which do not offer any commercially available product or service to the recipients, such as faxes that offer free or “no cost” electronic health record collection to the recipients, are not advertisements under the Telephone Consumer Protection Act (the “TCPA”). The requested ruling is consistent with the Commission’s previous orders regarding what constitutes an advertisement under the TCPA and the legislative intent and purpose of the TCPA.

M3 provides services to the healthcare and the life science industries, including market research, medical education, ethical drug promotion, clinical development, job recruitment, and clinic appointment services.

To facilitate participation in its blinded market research surveys, M3 sent invitations via fax to medical professionals throughout the US in order to reach a broad, representative sample of prospective respondents. In carrying out its surveys, M3 follows strict codes of conduct promulgated by independent research organizations. M3 is certified to ISO 26362 standards for market and opinion research, which requires that M3 does not attempt to market goods or services under the guise of research. Accordingly, every market research survey conducted by M3 is reviewed and analyzed to ensure that the surveys only involve opinion collection and not advertising or marketing. M3's compliance with these standards is audited annually by the CASRO Institute for Research Quality. Nonetheless, on June 10, 2016, Plaintiff Comprehensive Health Care Systems Of The Palm Beaches, Inc. filed a putative TCPA class action against M3 in the United States District Court for the Southern District of Florida, alleging, without any support, that our fax invitations are advertisements for paid online surveys.

In March 20, 2017, M3 filed a Petition for Expedited Declaratory Ruling (available at <https://ecfsapi.fcc.gov/file/10321896504076/M3%20Petition%20for%20Declaratory%20Ruling.pdf>) (hereinafter "M3 USA Petition"). Although the M3 USA 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 purposes, the overarching request of both petitions is similar – clarity regarding the meaning of "advertisement" so as to curtail abusive TCPA litigation. 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.

In conclusion, we support the Petitioner's request for additional clarity. A ruling from the Commission clarifying that faxes which do not offer any commercially available product or service to the recipients, such as faxes that offer free or "no cost" electronic health record collection, are not "advertisements" under the TCPA would be consistent with the Commission's previous orders regarding what constitutes an advertisement under the TCPA and the legislative intent and purpose of the TCPA.

We thank the Commission for the opportunity to comment, and respectfully request that the Petitioner's request be granted.