

March 28, 2019

VIA ELECTRONIC FILING

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: *In re Best Doctor's Inc.'s Petition for Declaratory Ruling*, CG Docket Nos. 02-278 & 05-338 – Notice of Ex Parte Presentation

Dear Ms. Dortch:

On March 26, 2017, Joseph R. Palmore and Bryan J. Leitch, Morrison & Foerster LLP, on behalf of Enclarity, Inc. ("Enclarity"), and David G. Thomas and undersigned counsel, Greenberg Taurig, LLP, on behalf of Best Doctors, Inc. ("Best Doctors"), met with Rebecca Hirselj, Daniel Margolis, Kurt Schroeder, and Mark Stone, Consumer and Governmental Affairs Bureau.

During the meeting, we discussed the Petition for Declaratory Ruling filed by Best Doctors on December 14, 2018 ("Petition"). In the Petition, Best Doctors requested the Commission to clarify that a faxed request to verify contact information and operational status of a medical practice for inclusion in a database of practicing physicians when the request does not state the commercial availability or quality of property, goods or services is not an advertisement under the Telephone Consumer Protection Act ("TCPA"). We discussed Best Doctors' business, the content of the fax at issue, the purpose for sending to fax, and the status of litigation before the United States District Court for the District of Massachusetts (*Kenneth A. Thomas MD, LLC v. Best Doctors, Inc.*, No. 1:18-cv-10957-DPW, Am. Compl. (D. Mass. Oct. 31, 2018)). We also discussed the scope of 47 U.S.C. § 227(B)(1)(c) and the meaning of "pretext" in *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991; Junk Fax Protection Act of 2005*, Report and order and Third Order on Reconsideration, 21 FCC Rcd 2787 (2006) ("*Junk Fax Order*"). In addition, we explained that the TCPA and the *Junk Fax Order* support Best Doctors' position that only the content of a fax is relevant to determining whether the fax is an advertisement subject to the TCPA. Finally, we discussed the proliferation of TCPA cases concerning faxes and the need for the Commission to provide courts with clear guidance regarding the applicability of the TCPA to faxed communications.

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Pursuant to Section 1.1206(b) of the Commission's rules, this letter is being filed electronically. If there are questions, please communicate directly with undersigned counsel for Best Doctors.

Sincerely,

A handwritten signature in cursive script, appearing to read "Debra McGuire Mercer".

Debra McGuire Mercer

cc: Rebecca Hirselj
Daniel Margolis
Kurt Schroeder
Mark Stone