



May 15, 2017

Secretary
Federal Communications Commission
445 12th St., SW, Room TW-A325
Washington, DC 20554

Re: CG Docket Nos. 02-278 and 05-338

I hereby submit the attached reply comments on behalf of the membership of the Insights Association, in response to the Petition from M3 USA for a Declaratory Ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "Howard Fienberg", written in a cursive style.

Howard Fienberg, PLC, PPC
Director of Government Affairs
The Insights Association

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of M3 USA Corporation's)	
Petition for Expedited Declaratory Ruling)	
)	
)	
Rules and Regulations Implementing the)	CG Docket No. 02-278
Telephone Consumer Protection Act of 1991)	CG Docket No. 05-338
)	

REPLY COMMENTS ON M3 PETITION FOR EXPEDITED DECLARATORY RULING

Howard Fienberg, PLC, PPC
Director of Government Affairs
Insights Association
1156 15th St, NW, Suite 302
Washington, DC 20005
Ph: (202) 800-2545
<http://www.insightsassociation.org>

This is the response of the Insights Association,¹ the leading and largest nonprofit association representing the marketing research and analytics industry, to comments filed on the M3 USA petition² by plaintiffs seeking to advance their litigation position in a certain TCPA class action against M3.³ The plaintiffs' various arguments are incorrect and provide no reason for the Commission to deny the Petition, which, as the Insights Association previously explained, should be granted.

The plaintiffs (Comprehensive Health Care Systems of the Palm Beaches and Dr. Robert Mauthe, hereafter referred to as Plaintiffs),⁴ misstate the *raison d'être* of marketing research firms⁵ and wrongly conflate marketing activities with those of marketing research.

For instance, Plaintiffs falsely state that "M3 uses the "market research" data generated by surveys, such as the one in which they invited Plaintiffs to participate, to market itself to "companies in the pharmaceutical industry,"⁶ when, in fact, the data (generally deidentified) is actually used to deliver insights on critical issues to clients. The Plaintiffs mischaracterize M3's business as "luring providers" into becoming part of a "social network portal,"⁷ when, in reality, research companies like M3 invite respondents to participate in research studies via in-depth interviews, or as part of focus groups, investigatory panels or closed online communities.

Plaintiffs further incorrectly assert that "M3's faxes are a pretext for registering medical providers to receive M3 marketing and sell M3 services."⁸ However, as explained in comments submitted to the FCC by J.D. Power, "legitimate market research surveys do not at any point in time result in direct marketing and sales to survey-takers by market research firms."⁹

No evidence legitimizes the Plaintiffs' claims.

The legal definition of marketing research specifically includes the requirement that "*no sales, promotional or marketing efforts are involved and through which there is no attempt to influence a participant's attitudes or behavior.*"¹⁰ J.D. Power also discussed that a research survey serving as the "pretext" for marketing and sales would constitute sales under the guise of research (known as "sugging"), a practice which explicitly violates research industry codes of ethics by which our members (including M3) have agreed to abide.¹¹

Plaintiffs erroneously claim that performing marketing research "is a "commercial" activity, not a scientific activity," and that fax invitations to participate in marketing research are

¹ The Insights Association originally filed comments with the FCC on M3's TCPA petition on April 27, 2017. <https://www.fcc.gov/ecfs/filing/1042792172309>

² M3 USA Petition for Expedited Declaratory Ruling. CG Docket Nos. 02-278 and 05-338). March 20, 2017. <https://www.fcc.gov/ecfs/filing/10321896504076>

³ Comprehensive Health Care Systems of the Palm Beaches, Inc. v. M3 USA Corporation, No. 16-cv-80967 (S.D. Fla.), originally filed on May 31, 2016, captioned Comprehensive Health Services, Inc. v. M3 USA Corporation, No. 16-cv-80874 (S.D. Fla.).

⁴ Comments from Comprehensive Health Care Systems of the Palm Beaches and Dr. Robert Mauthe to the FCC on M3's TCPA petition. April 27, 2017. <https://www.fcc.gov/ecfs/filing/1042778328716>

⁵ A purpose explained at length in the Insights Association comments, particularly on page 4.

⁶ Plaintiffs, page 4

⁷ Plaintiffs, page 15

⁸ Plaintiffs, page 8

⁹ J.D. Power's comments to the FCC on M3's TCPA petition. April 26, 2017. <http://www.fcc.gov/ecfs/filing/1042554279765>, page 2

¹⁰ Insights Association comments, page 4.

¹¹ J.D. Power, pages 4-5

“advertisements” in furtherance of a commercial purpose.¹² As a matter of common sense, this is impossible: no payment by the fax recipients for any property, good or service is implied, suggested, encouraged or required, either now or in the future. As J.D. Power commented, a research company’s “sales” function is “not directed at individual consumers,” but is instead directed at the “clients on whose behalf we conduct research.”¹³ The research function is not commercial in nature, and “the plaintiffs’ bar has frequently glossed over this basic fact.”¹⁴

Plaintiffs further misrepresent that there are no other marketing research companies operating “in the same way M3 does,” using the fax machine to contact potential respondents.¹⁵ As the Insights Association explained in our original comments, faxes remain an important and common method to reach healthcare professionals for research with them.”¹⁶

Finally, Plaintiffs propose that no “other survey companies are being sued for sending fax advertisements in violation of the TCPA.”¹⁷ The Insights Association has heard from multiple research companies over the years targeted in similar fashion by TCPA fax litigation, with most cases we know of being ultimately dismissed or settled out of court on a nuisance basis.

Once again, the Insights Association urges the FCC to rule that invitations to participate in research do not constitute advertisements under the TCPA as long as no property, good or service is advertised in the fax invitation or in the survey. Ultimately, we call for the FCC to grant the M3 petition and clarify that, as the petition outlined, a “research survey is not, in and of itself, a ‘property, good or service’ vis-à-vis the recipient of the survey invitation.”¹⁸

¹² Plaintiffs, page 16

¹³ J.D. Power, page 6

¹⁴ J.D. Power, page 6

¹⁵ Comprehensive et al, page 11

¹⁶ Insights Association comments, pages 5-6

¹⁷ Comprehensive et al, page 11

¹⁸ M3, page 17.