



PUBLIC NOTICE

Federal Communications Commission
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CONSUMER AND GOVERNMENTAL AFFAIRS BUREAU SEEKS COMMENT ON INOVALON, INC. PETITION FOR DECLARATORY RULING UNDER THE TELEPHONE CONSUMER PROTECTION ACT AND JUNK FAX PREVENTION ACT

CG Docket No. 02-278

Comment Date: March 26, 2018

Reply Comment Date: April 10, 2018

With this Public Notice, we seek comment on a petition for declaratory ruling filed by Inovalon, Inc. (Inovalon).¹ Inovalon states that “a declaratory ruling from the Commission is necessary to eliminate judicial confusion over what constitutes an actionable ‘unsolicited advertisement’” under the Telephone Consumer Protection Act (TCPA) as amended by the Junk Fax Prevention Act of 2005.²

Inovalon asks the Commission to declare, first, that “[w]here 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.”³ Second, Inovalon asks the Commission to declare that “[f]axes 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.”⁴

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

¹ Inovalon, Inc. Petition for Declaratory Ruling Clarifying Unsolicited Advertisement Provision of Telephone Consumer Protection Act and Junk Fax Prevention Act, CG Docket No. 02-278 (filed Feb. 20, 2018) (*Petition*).

² *Petition* at 1. 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); *see also* Junk Fax Prevention Act of 2005, Pub. L. No. 109-21, 119 Stat. 359 (2005) (amending the TCPA); 47 CFR § 64.1200(f)(1), (f)(15) (definitions of “advertisement” and “unsolicited advertisement”).

³ *Petition* at 1.

⁴ *Id.* at 2.

Pursuant to section 1.2 of the Commission's rules,⁵ interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <http://www.fcc.gov/ecfs/>.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

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 12th 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 and 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 9050 Junction Drive, Annapolis Junction, MD 20701.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW, Washington, DC 20554.

People with Disabilities: 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 or call the Consumer & 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.⁶ 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 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

⁵ 47 CFR § 1.2.

⁶ *See id.* §§ 1.1200 *et seq.*

consistent with section 1.1206(b) of the Commission's rules.⁷ 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).⁸ 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.

⁷ *Id.* § 1.1206(b).

⁸ *Id.* § 1.49(f).