

# The Insights Association and AAPOR File FCC Petition Seeking Legal Differentiation for Marketing and Research

WASHINGTON, DC, UNITED STATES, October 31, 2017 /EINPresswire.com/ -- Seeking to clarify the regulatory distinction between the intent to market and sell to individuals and the dissimilar intent to understand market needs, the [Insights Association](#) and AAPOR have filed a petition with the FCC to secure "greater clarity" that will be "critical to restoring a measure of sanity to TCPA litigation."

"Courts and trial lawyers are conflating [marketing research](#) with marketing to the detriment of survey, opinion and marketing research companies," said David W. Almy, CEO of the Insights Association. According to a petition filed today at the Federal Communications Commission (FCC), the agency needs to clarify that marketing research is separate and distinct from marketing for purposes of compliance with the [Telephone Consumer Protection Act](#) (TCPA). "Research has a fundamentally different purpose than sales and marketing. That researchers have paid millions to settle an epidemic of TCPA lawsuits is unnecessary, unwarranted and very often absurd," Almy added.



Insights Association ceo David Almy outside of the Federal Communications Commission (FCC)

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*Howard Fienberg, the Insights Association*

The petition, filed by the Insights Association, the leading trade association for the market research and data analytics industry, and the American Association of Public Opinion Research (AAPOR), which promotes the sound and ethical conduct and use of public opinion research, requested a declaratory ruling from the FCC that:

-- communications should not be presumed to be advertising or marketing under the TCPA simply because they are sent by a for-profit company, or might ultimately be used at some future date to improve sales or customer relations;

-- the presence in a communication, ancillary document or

webpage revealing the identity of an organization conducting research – a level of transparency

required by professional ethical codes – that can be mischaracterized as "advertising" does not make the communication "dual-purpose";

-- the FCC's "vicarious liability" regime applies only to telemarketing and debt collection, not to survey, opinion, and market research firms; and

-- survey, opinion, and marketing research studies are not goods or services provided to a research respondent, even if the studies involve an incentive for participation.

"Selling under the guise of research, or sugging, is a practice condemned by AAPOR," said Tim Johnson, AAPOR President. "It is incumbent on the FCC to differentiate between marketing research and marketing."

The petitioners noted some disturbing court decisions mistakenly "premised on the notion that businesses do not communicate with consumers except for the purpose of turning a profit," and urged the FCC to recognize that, like all for-profit businesses, market research companies advertise and market their services only to research sponsors – "the clients on whose behalf the research is conducted" – and not to research respondents.

Meanwhile, "the plaintiffs' bar and some courts have begun using a loose interpretation of" FCC guidance to find hidden sales and marketing purposes inside marketing research phone calls and faxes.

The petitioners regularly combat sales under the guise of research, a deceptive practice known as "sugging" in the research industry, which would constitute "pretext" for sales or marketing under the FCC's guidance. By contrast, the Insights Association and AAPOR called upon the FCC to clarify that an instance as simple as a survey mentioning a corporate client in a survey question, or a research company discussing its own services in a privacy policy or website separate from a research study, does not prove the existence of any "dual purpose" – the communications would still constitute research, not marketing.

Vicarious liability means that someone is held responsible for the actions or omissions of another person. The FCC has ruled before that calls placed by a telemarketer's or debt collector's agent should be treated as if the telemarketer or debt collector made the calls himself. The agency "could have simply stated that vicarious liability applies to all principal-agent relationships, but it did not do so," asserted the petitioners. A recent class action court decision applied that same vicarious liability regime to a research company and the petitioners asked the FCC to clarify that such liability only applies to telemarketing and debt collection.

The FCC has repeatedly said that marketing research is not telemarketing under the TCPA because research communications, in the words of the TCPA text, do not "[encourage] the purchase or rental of, or investment in, property, goods, or services." Similarly, the Insights Association and AAPOR asked the FCC to clarify that research studies themselves don't "constitute property, goods, or services vis-à-vis the persons taking the surveys. These studies (and their results) are services provided to research clients, not consumers [who take surveys]." Although researchers often offer incentives for research participants in cash or prizes, "this is done only to ensure robust participation" in research studies.

"With researchers already preyed upon by trial lawyers thanks to the FCC's 2015 TCPA rules," commented Howard Fienberg, director of government affairs for the Insights Association, the FCC "can take these simple steps to limit class actions based on misunderstanding and mischaracterization of the *raison d'être* of marketing research."

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The Insights Association is the leading trade association for the market research and data analytics industry. Inspired by the 2017 merger of CASRO and MRA, all Insights Association proceeds are invested in advocacy, education and other initiatives to directly support the marketing research and analytics community. Visit <http://www.insightsassociation.org> for more information.

The American Association for Public Opinion Research (AAPOR) is the leading professional organization of public opinion and survey research professionals in the U.S., with members from academia, media, government, the non-profit sector and private industry. AAPOR promotes the sound and ethical conduct and use of public opinion research. Visit <http://www.aapor.org> for more information.

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