

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, DC 20554

In the Matter of	)	
	)	
Consumer and Government Affairs Bureau Seeks	)	CG Docket No. 18-152
Comment on Interpretation of the Telephone	)	
Consumer Protection Act in Light of D.C. Circuit’s	)	
ACA International Decision	)	
	)	
Rules and Regulations Implementing the	)	CG Docket No. 02-278
Telephone Consumer Protection Act of 1991	)	

To: The Commission

**REPLY COMMENTS OF BROADNET TELESERVICES LLC**

Broadnet Teleservices LLC (“Broadnet”) hereby replies to comments in response to the Commission’s public notice (“*Public Notice*”) addressing the Commission’s July 2016 *Broadnet Declaratory Ruling*.<sup>1</sup> In the *Broadnet Declaratory Ruling*, the Commission appropriately concluded that the federal government and those that work on its behalf are not “persons” under the Telephone Consumer Protection Act (“TCPA”). In doing so, the Commission significantly enhanced the ability of a large portion of the population to directly engage with federal government officials – namely citizens that rely on their wireless phones as their primary, or only, means of telephone communication, a population that disproportionately includes people of color, millennials, and individuals living in poverty.

---

<sup>1</sup> *Consumer and Governmental Affairs Bureau Seeks Comment on Interpretation of the Telephone Consumer Protection Act in Light of the D.C. Circuit’s ACA International Decision*, Public Notice, DA 18-493, at 4 (rel. May 14, 2018) (“*Public Notice*”) (citing *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*; *Broadnet Teleservices LLC Petition for Declaratory Ruling*, Declaratory Ruling, 31 FCC Rcd 7394 (2016) (“*Broadnet Declaratory Ruling*”)).

Although some commenters quarrel with the *Broadnet Declaratory Ruling*'s application to contractors, notably absent in the record in response to the *Public Notice* is the following:

- Any dispute of the importance and public interest value of telephone town hall calls that enable direct interaction between citizens and government officials, such as those provided through Broadnet's TeleForum™ technology platform;
- Any question that all citizens, regardless of the technology they rely on, deserve equal opportunities to engage with their government;
- Any actual evidence of calling abuses or nuisances by or on behalf of the federal government in the almost two years since the Commission issued the *Broadnet Declaratory Ruling*;
- Any disagreement with the Commission's determination that the federal government is not a "person" under the TCPA; and
- Any opposition to a Commission declaration that state and local governments are not "persons" under the TCPA, consistent with the *Broadnet Declaratory Ruling*'s treatment of the federal government.

In light of this record, the Commission's path forward is clear: To avoid jeopardizing all citizens' access to federal government officials through telephone town hall calls, the Commission should not disturb the conclusion reached in the *Broadnet Declaratory Ruling*, and instead promptly extend the relief provided under the ruling to state and local government officials. To the extent the Commission nevertheless feels the need to reassess the legal underpinning of the *Broadnet Declaratory Ruling*, the Commission must ensure that any actions it takes do not risk reducing or eliminating (or, in the case of state and local governments, continuing to inhibit) the ability of government officials to reach *all* citizens via telephone town hall calls.<sup>2</sup>

---

<sup>2</sup> See Comments of Broadnet Teleservices LLC, CG Docket Nos. 18-152 & 02-278, at 6 n.12 (June 13, 2018) ("Broadnet Comments").

## **I. TELEPHONE TOWN HALL CALLS FACILITATE DEMOCRATIC DIALOGUE AND ENHANCE CIVIC ENGAGEMENT**

With one phone call, government entities and officials using Broadnet’s TeleForum technology platform can invite citizens – from several hundred to hundreds of thousands – to participate in a shared real-time exercise in democracy. Much more than just receiving information, citizens are able to engage in a live conversation, hearing directly from their government about issues important to the local community and providing real-time feedback. Federal, state, and local government entities have utilized TeleForum events in myriad ways to connect and communicate with citizens about a wide variety of issues.

Prior to the *Broadnet Declaratory Ruling*, however, due in part to confusion caused by the previous Commission’s informal guidance,<sup>3</sup> citizens that relied on wireless phones as their primary, or only, means of telephone communication were deprived of each important opportunity to engage with their government. Wireless-only citizens include a disproportionate number of people of color, millennials, and individuals living in poverty,<sup>4</sup> and these individuals deserve the same access to democracy and the same engagement with policymakers that long has been possible for individuals with access to landline phones.

---

<sup>3</sup> See Petition of Broadnet Teleservices LLC for Declaratory Ruling, CG Docket No. 02-278, at 3 (Sept. 16, 2015) (“Broadnet Petition”) (citing Federal Communications Commission, FAQs – Tele-Town Halls (July 31, 2015), <https://docs.fcc.gov/public/attachments/DOC-334684A1.pdf>; Shawn Zeller, *Tele-Town Halls Effectively Blocked for Politicians*, Roll Call (July 28, 2015), [http://www.rollcall.com/news/tele\\_town\\_halls\\_effectively\\_blocked\\_for\\_politicians-243060-1.html](http://www.rollcall.com/news/tele_town_halls_effectively_blocked_for_politicians-243060-1.html); Mario Trujillo, Lawmakers could be violating robocall restrictions, The Hill (July 28, 2015), <http://thehill.com/policy/technology/249496-lawmakers-could-be-violating-robocall-restrictions>).

<sup>4</sup> See, e.g., Broadnet Petition at 3-4; Letter from Joshua M. Bercu, Counsel to Broadnet Teleservices LLC, to Marlene H. Dortch, Secretary, Federal Communications Commission, CG Docket No. 02-278, at 1-2 (Dec. 17, 2015).

In this regard, the *Broadnet Declaratory Ruling* addressed a very important part of this problem: By declaring that the federal government and contractors that act on its behalf are not subject to the TCPA’s restrictions, the Commission ensured that wireless-only citizens would have access to telephone town hall calls with federal government officials. The Commission, however, left unanswered whether such citizens could have the same such access to their state and local governments – an issue the Commission should swiftly rectify.

## **II. SEVERAL KEY ISSUES ARE UNOPPOSED IN THE RECORD**

Though some commenters squabble with the *Broadnet Declaratory Ruling*’s application to contractors, they do not oppose the Commission’s finding that the federal government is not a “person” under the TCPA. Nor do they oppose extending that finding to state and local governments.

*Commenters do not challenge the fact that the federal government is not a “person” under the TCPA.* The National Consumers Law Center (“NCLC”), which filed a petition for reconsideration of the *Broadnet Declaratory Ruling*,<sup>5</sup> makes clear in its comments that its concerns lie exclusively with the application of the *Broadnet Declaratory Ruling* to federal government *contractors*. For example, in “[d]ealing with the Broadnet Ruling,” NCLC asks the Commission to “clearly reiterate that federal contractors are ‘persons’ under the TCPA,”<sup>6</sup> negating the Commission’s “determination that contractors acting on behalf of the federal government are not persons covered by section 227(b)(1) of the TCPA.”<sup>7</sup> In such statements,

---

<sup>5</sup> See Petition of National Consumer Law Center et al. for Reconsideration of Declaratory Ruling and Request for Stay Pending Reconsideration, CG Docket No. 02-278 (July 26, 2016).

<sup>6</sup> Comments of National Consumer Law Center *et al.*, CG Docket Nos. 18-152 & 02-278, at 40 (June 13, 2018) (“NCLC Comments”).

<sup>7</sup> *Id.* at 41.

however, NCLC never questions the fact that the TCPA does not apply to the federal government and federal government officials,<sup>8</sup> and all other commenters that take issue with the *Broadnet Declaratory Ruling* likewise focus on the ruling’s application to contractors – never to its primary finding that the TCPA does not apply to the federal government.<sup>9</sup>

In sum, there is no dispute in the record (nor one raised through a petition for reconsideration) that the Commission correctly determined in the *Broadnet Declaratory Ruling* that “Congress intended the federal government not to be included within the persons covered by the prohibitions in section 227(b)(1).”<sup>10</sup> Accordingly, there is no reason, neither substantive nor procedural, for the Commission to question or reconsider that finding. Moreover, there is no need for the Commission to reconsider the *Broadnet Declaratory Ruling*’s conclusion concerning those who act on behalf of the government as well, as doing so would unnecessarily risk the substantial benefits for federal government officials and their constituents made possible

---

<sup>8</sup> Importantly, neither NCLC nor any other party sought reconsideration of the Commission’s determination that the federal government is not a “person” under the TCPA. See *Broadnet Comments* at 2 n.4.

<sup>9</sup> See *Comments of Consumers Union*, CG Docket Nos. 18-152 & 02-278, at 4 (June 13, 2018) (“*Consumers Union Comments*”); *Comments of Consumer Action*, CG Docket Nos. 18-152 & 02-278, at 2 (June 11, 2018) (“*Consumer Action Comments*”); *Comments of Burke Law Offices, LLC*, CG Docket No. 02-278, at 7 (June 13, 2018) (“*Burke Comments*”) (filed as Alexander H. Burke); *Comments of Joe Shields*, CG Docket Nos. 18-152 & 02-278, at 10 (June 13, 2018); *Comments by John A. Shaw*, CG Docket Nos. 18-152 & 02-278, at 2 (June 13, 2018); *Comments of Justin T. Holcombe*, CG Docket Nos. 18-152 & 02-278, at 12 (June 13, 2018); *Comments of Craig Cunningham and Craig Moskowitz*, CG Docket Nos. 18-152 & 02-278, at 2 (June 12, 2018) (“*Cunningham Comments*”).

<sup>10</sup> *Broadnet Declaratory Ruling*, 31 FCC Rcd at 7399-400 ¶ 12 (“[H]ad Congress wanted to subject the federal government to the TCPA, it easily could have done so by defining ‘person’ to include the federal government. That Congress chose not to include such a definition, or ... any other language indicating an intent to ‘lift’ the sovereign immunity that presumptively applies to the United States and its agencies, is conclusive evidence that Congress intended the federal government not to be included within the persons covered by the prohibition in section 227(b)(1).”).

by the ruling.<sup>11</sup> In the *Broadnet Declaratory Ruling*, the Commission reasonably determined that applying its findings to contractors working on behalf of the federal government was necessary to ensure that, consistent with congressional intent, such restrictions do not apply to the federal government itself.<sup>12</sup> The Commission has clear authority to interpret the definitions of Section 153 of the Communications Act as the context requires, and the Commission reasonably interpreted the definition of “person” to give force to its determination that Congress did not intend that the TCPA apply to the federal government.<sup>13</sup> Further, contrary to the claims otherwise, the *Broadnet Declaratory Ruling* is consistent with the 2015 Budget Act Amendments to the TCPA, as well as the Supreme Court’s *Campbell-Ewald* decision.<sup>14</sup>

Importantly, while some commenters continue to claim theoretical harmful consequences to consumers as a result of the *Broadnet Declaratory Ruling*,<sup>15</sup> none provides any actual evidence of such harm in the almost two years since the Commission ruled on the issue. As the National Opinion Research Center explains, “[s]ince [the] release of the *Broadnet Declaratory Ruling* in July 2016 ... overblown fears have not come to pass, and for good reason.”<sup>16</sup> Indeed,

---

<sup>11</sup> See Opposition of Broadnet Teleservices LLC to Petition for Reconsideration of National Consumer Law Center, CG Docket No. 02-278 (Aug. 31, 2016) (“Broadnet Opposition”).

<sup>12</sup> *Id.* at 10; see also Comments of RTI International, CG Docket Nos. 18-152 & 02-278, at 4 (June 13, 2018) (“RTI Comments”).

<sup>13</sup> Broadnet Opposition at 10-11; see also Comments of Professional Services Council, CG Docket Nos. 18-152 & 02-278, at 11 (June 13, 2018) (“PSC Comments”); Comments of the National Opinion Research Center, CG Docket Nos. 18-152 & 02-278, at 6-7 (June 13, 2018) (“NORC Comments”).

<sup>14</sup> Broadnet Opposition at 12-15; NORC Comments at 11-13; RTI Comments at 4, 7.

<sup>15</sup> See, e.g., NCLC Comments at 46 (“The danger to consumers from unwanted and unstoppable robocalls resulting from the Broadnet Ruling is potentially devastating.”); Burke Comments at 7 (calling the *Broadnet Declaratory Ruling* “terrible for consumers”).

<sup>16</sup> NORC Comments at 7.

“[t]here simply is no reason to believe [that] the public has or will see any difference at all in the frequency or content of calls they receive from the federal government, regardless of whether they are placed by the government or by a contractor.”<sup>17</sup> Accordingly, there are no actual consumer harms that justify the Commission revisiting its conclusions in the *Broadnet Declaratory Ruling*. To the contrary, heedlessly rescinding the decision would harm wireless-only consumers by risking their opportunities to engage with federal government officials.

***No commenter questions that state and local governments are not “persons” under the TCPA.*** Commenters that oppose the extension of the *Broadnet Declaratory Ruling* to state and local governments again focus solely on its application to state and local government contractors, not the governments themselves.<sup>18</sup> They never assert that state and local governments are (or should be) “persons” for purposes of the TCPA, nor do they suggest that state and local governments are subject to the TCPA’s restrictions set forth in section 227(b)(1). To the contrary, NCLC acknowledges that there are several cases in which courts found that state or local governments are not liable for TCPA violations.<sup>19</sup>

Indeed, as Broadnet has explained, numerous Supreme Court cases make abundantly clear that, consistent with the Commission’s reasoning in the *Broadnet Declaratory Ruling*, the term “person” does not include state governments and state government officials.<sup>20</sup> Further,

---

<sup>17</sup> *Id.* at 10; *see also* PSC Comments at 13.

<sup>18</sup> *See* NCLC Comments at 48-49; Consumers Union Comments at 4; Consumer Action Comments at 2; Cunningham Comments at 2, 4.

<sup>19</sup> NCLC Comments at 49. NCLC suggests that a case holding that an arm of the local government was not a person under the Communications Act “is not relevant, because it was the local government itself that was being sued under the TCPA, not the independent contractor,” *id.*, which underscores NCLC’s sole focus on the TCPA’s application to state and local government contractors, not the governments in the first instance.

<sup>20</sup> *See* Broadnet Comments at 7; *see also* RTI comments at 6.

several courts have indicated that when Congress defines “person” in a manner akin to that in the Communications Act, such language excludes municipal governments and other local government entities.<sup>21</sup>

Accordingly, just as there is no dispute in the record regarding whether the federal government and federal government officials are subject to the TCPA’s restrictions, there also is no dispute that state and local governments and state and local government officials are not “persons” for purposes under the TCPA. Commission inaction therefore can no longer be justified.<sup>22</sup> Instead, the Commission should promptly declare that state and local governments are not “persons” for purposes of the TCPA and thus not subject to its restrictions. Moreover, consistent with the *Broadnet Declaratory Ruling*, the Commission can and should extend such finding to those that act on behalf of state and local governments.<sup>23</sup> Just as instances of abuse of the *Broadnet Declaratory Ruling* by federal government contractors have been theoretical but never realized, there is no reason to believe that any consumer harm will be caused by those acting on behalf of state and local governments.<sup>24</sup>

---

<sup>21</sup> See Broadnet Comments at 8.

<sup>22</sup> See, e.g., RTI Comments at 7 (The *Broadnet Declaratory Ruling* “did not reach the issue of whether state and local governments are ‘persons,’ but it should have.”).

<sup>23</sup> As noted above, in the *Broadnet Declaratory Ruling*, the Commission reasonably determined that applying its findings to contractors working on behalf of the federal government was necessary to ensure that, consistent with congressional intent, such restrictions do not apply to the federal government itself.

<sup>24</sup> Broadnet has previously explained that state and local governments have strong incentives not to contact their citizens with unwanted robocalls. See Letter from Joshua M. Bercu, Counsel to Broadnet Teleservices LLC, to Marlene H. Dortch, Secretary, Federal Communications Commission, CG Docket No. 02-278 (Feb. 29, 2016). Moreover, no evidence has yet to be provided that state and local government officials have abused their current ability to make robocalls to residential lines.



### III. CONCLUSION

For the reasons described herein, rather than jeopardize the important communications that the *Broadnet Declaratory Ruling* has enabled, the Commission should finally ensure that citizens can have the same engagement opportunities with their state and local governments that they currently can have with the federal government.

Respectfully submitted,

BROADNET TELESERVICES LLC

By: /s/ Joshua M. Bercu  
Joshua M. Bercu  
Patrick R. Halley

Wilkinson Barker Knauer, LLP  
1800 M Street, NW Suite 800N  
Washington, DC 20036  
202.783.4141

Its Attorneys

June 28, 2018