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July 18, 2016

**VIA ELECTRONIC DELIVERY**

Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 12th Street, SW  
Room TWA325  
Washington, DC 20554

**Re: Notice of *Ex Parte* Presentations  
CG Docket No. 02-278**

Dear Ms. Dortch:

On July 15, 2016, Mark W. Brennan and Wesley B. Platt of Hogan Lovells US LLP, as counsel to RTI International ("RTI"), met with: Gigi Sohn, Counselor to Chairman Wheeler; Diane Cornell, Special Counsel to Chairman Wheeler; and Holly Saurer, Legal Advisor to Chairman Wheeler; and Chavez Adams and Ariel Diamond from Chairman Wheeler's office. On July 14, 2016, we met with Travis Litman, Senior Legal Advisor to Commissioner Rosenworcel, and Jennifer Thompson, Special Advisor and Confidential Assistant to Commissioner Rosenworcel.

At both meetings, we discussed the Commission's recent clarification that the Telephone Consumer Protection Act ("TCPA") "does not apply to calls made by or on behalf of the federal government in the conduct of official government business, except when a call made by a contractor does not comply with the government's instructions."<sup>1</sup> The FCC's decision resolved a petition for declaratory ruling filed by RTI in 2014, which asked the FCC to confirm that the TCPA does not restrict research survey calls made by or on behalf of the federal government.<sup>2</sup> During the meetings, we explained that it was appropriate for the Commission to clarify this important aspect of the TCPA, consistent with Congress' delegation of policymaking responsibilities.<sup>3</sup>

We also discussed that if Congress had intended to subject the federal government and those calling on its behalf to the TCPA, it could easily have defined "person" to include the federal

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<sup>1</sup> See *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991 et al.*, Declaratory Ruling, FCC 16-72 (rel. July 5, 2016) ("*Clarification*"); see also 47 U.S.C. § 227(b)(1).

<sup>2</sup> See RTI, Petition for Expedited Declaratory Ruling, CG Docket No. 02-278 (filed Sept. 29, 2014) ("*RTI Petition*").

<sup>3</sup> See *United States Telecom Assoc. v. FCC*, No. 15-1063, at 22-23 (D.C. Cir. 2016) (quoting *Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.* 467 U.S. 837, 865 (1984)).

government.<sup>4</sup> Instead, the plain language of the TCPA and the Commission's TCPA rules demonstrates that the TCPA does not apply to research survey calls by or on behalf of the federal government.<sup>5</sup> Both restrict only "persons" from certain calling activities,<sup>6</sup> and the federal government is not a "person" as defined in the Communications Act (in which the TCPA is codified).<sup>7</sup> The Supreme Court has repeatedly held that "the term 'person' does not include the sovereign" and that "statutes employing the [term] are ordinarily construed to exclude it."<sup>8</sup> Moreover, as the Commission and members of Congress both emphasized, "the goal of the TCPA has never been to impede communications from the federal government, especially those that gather data for important government research."<sup>9</sup>

In fact, as RTI has explained in the record, the Commission can use its authority under the Communications Act and the TCPA to not only interpret the applicability of the TCPA to calls "on behalf of" the federal government, but also to clarify what "on behalf of" means in that context and provide examples of calls that are placed "on behalf of" the federal government (e.g., RTI's research survey calls made pursuant to contracts with the federal government).<sup>10</sup>

Pursuant to Section 1.1206(b) of the Commission's rules, I am filing this notice electronically in the above-referenced docket. Please contact me directly with any questions.

Respectfully submitted,

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<sup>4</sup> See *Clarification* ¶ 12.

<sup>5</sup> See, e.g., Letter from Mark W. Brennan, Counsel, RTI, to Marlene H. Dortch, Secretary, FCC, CG Docket No. 02-278 (filed June 11, 2015); RTI Petition at 5-8.

<sup>6</sup> See 47 U.S.C. § 227(b)(1); 47 C.F.R. § 64.1200(a).

<sup>7</sup> See 47 U.S.C. § 153(39).

<sup>8</sup> *Will v. Michigan Dep't of State Police*, 491 U.S. 58, 64 (1989); *Wilson v. Omaha Tribe*, 442 U.S. 653, 667 (1979) (quoting *U.S. v. Cooper Corp.*, 312 U.S. 600, 604 (1941)); see also, e.g., *U.S. Postal Serv. v. Flamingo Indus. (USA) Ltd.*, 540 U.S. 736, 745 (2004); *U.S. v. Mine Workers*, 330 U.S. 258, 275 (1947).

<sup>9</sup> *Clarification* ¶ 18; Letter from Reps. David Price, G.K. Butterfield, and Renee Ellmers, U.S. Congress, to Tom Wheeler, Chairman, FCC, CG Docket No. 02-278, at 1 (Jan. 8, 2015).

<sup>10</sup> See, e.g., *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Second Order on Reconsideration, 20 FCC Rcd 3788 ¶¶ 28-31 (2005) (determining the circumstances under which calls by for-profit entities are, and are not, considered "on behalf of" tax-exempt nonprofit organizations); *Clarification* ¶ 17 (explaining that the clarification accords with the Commission's "longstanding administrative precedent" that the TCPA does not apply to calls placed on behalf of a principle if the principle would not be liable if it had placed the calls itself).

cc: Gigi Sohn  
Dianne Cornell  
Holly Saurer  
Travis Litman  
Jennifer Thompson  
Chavez Adams  
Ariel Diamond