

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

In the Matter of)	
)	
Rules and Regulations Implementing the)	CG Docket No. 02-278
Telephone Consumer Protection Act of 1991)	
)	
Broadnet Teleservices LLC)	
Petition for Declaratory Ruling)	
)	
National Employment Network Association)	
Petition for Expedited Declaratory Ruling)	
)	
National Employment Network Association)	
Petition for Expedited Declaratory Ruling)	

To: The Commission

**OPPOSITION OF ELIZA CORPORATION TO
NCLC'S PETITION FOR RECONSIDERATION OF
BROADNET TELESERVICES LLC DECLARATORY RULING**

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August 31, 2016

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Summary

Eliza Corporation (“Eliza”) submits these comments in opposition of the National Consumer Law Center’s Petition for Reconsideration of the Federal Communications Commission’s *Broadnet Declaratory Ruling*. The *Broadnet Declaratory Ruling* should be upheld. The Commission’s ruling that contractors acting as agents of the federal government, under the authority and pursuant to the instructions of the federal government, should not be classified as “persons” under the Telephone Consumer Protection Act (“TCPA”) was based on reasonable statutory interpretation, longstanding Commission precedent, and the Supreme Court’s decision in *Campbell-Ewald Co. v. Gomez*.

Congress’s adoption of the Bipartisan Budget Act of 2015 that amended Section. 227(b) of the Communications Act of 1934, does not foreclose the FCC from ruling on Section 227(b)(1)’s definition of “person” at this time. Nor is the *Broadnet Declaratory Ruling* in conflict or inconsistent with the amendments to Section 227. The federal government *and* its contractors acting on behalf of the federal government with the full authority of the federal government pursuant to the instructions of the federal government should be exempt from TCPA’s consent requirements. Federal government contractors should be treated the same as a non-profit organization’s call center when delivering automated communications on behalf of its principal.

NCLC’s claims that the federal government has other options to contact its citizens without using automated technology is not only irrelevant to the narrow issue of the definition of “person,” it is wholly unsupported and unrealistic. These assertions ignore and/or disregard the value and effectiveness of today’s automated technology and its important role in implementing the policies and programs of the United States government. The federal government should be

able to reach all of its citizens in the most effective and efficient manner to deliver communications that can benefit and inform them.

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Eliza Corporation (“Eliza”), through undersigned counsel, respectfully submits these comments to the Federal Communications Commission (“FCC” or “Commission”) in opposition to the National Consumer Law Center’s, its legal aid programs and advocacy organizations (collectively, “NCLC”) Petition for Reconsideration (“NCLC Petition”)¹ of the Commission’s *Declaratory Ruling* in the above-captioned proceeding.² NCLC has requested that the

¹ National Consumer Law Center et al., Petition for Reconsideration of Declaratory Ruling and Request for Stay Pending Reconsideration, CG Docket No. 02-278 (filed July 26, 2016); *see also Consumer and Governmental Affairs Bureau Seeks Comment on National Consumer Law Center Petition for Reconsideration of the FCC’s Broadnet Declaratory Ruling*, Public Notice, DA 16-878 (rel. Aug. 1, 2016).

² Broadnet Teleservices LLC Petition for Declaratory Ruling, *et. al.*, Declaratory Ruling, FCC 16-72, CG Docket No. 02-278 (rel. July 5, 2016) (“*Broadnet Declaratory Ruling*”).

Commission stay pending reconsideration and reverse the *Broadnet Declaratory Ruling* because contractors acting as agents of the federal government should be classified as “persons” under the Telephone Consumer Protection Act (“TCPA”) and therefore, should not receive immunity from the TCPA that the federal government is subject to.

I. Introduction

Eliza supports the arguments raised by RTI International and Broadnet Teleservices LLC in opposition to NCLC’s request to stay the *Broadnet Declaratory Ruling*.³ We provide these separate comments to emphasize two material points on NCLC’s substantive request for a reversal of the *Broadnet Declaratory Ruling*.

First, Congress’s adoption of the Bipartisan Budget Act of 2015 (“Budget Act”) amending Section 227 of the Communications Act of 1934, as amended (the “Communications Act”), to exempt the prior express consent requirements for prerecorded or artificial voice calls (including text messages) sent using an automatic telephone dialing system (“ATDS”) (collectively, “automated technology”) solely to collect a debt owed to or guaranteed by the United States⁴ does not foreclose the FCC from ruling on Section 227(b)(1)’s definition of “person” at this time. Nor is Section 301 of the Budget Act, which amended the TCPA (the “Amendment”) in conflict or inconsistent with the FCC’s ruling that the federal government *and* its contractors acting on behalf of the federal government with the full authority of the federal government pursuant to the instructions of the federal government are exempt from TCPA’s consent requirements.

³ Opposition of RTI International to Request for Stay, CG Docket No. 02-278 (filed Aug. 11, 2016) (“RTI Stay Opposition”); Opposition of Broadnet Services LLC to Request for Stay, CG Docket No. 02-278 (filed Aug. 11, 2016) (“Broadnet Stay Opposition”).

⁴ Budget Act, Pub. L. No. 114-74, 129 Stat. 584, § 301(a)(1)(A)(amending 47 U.S.C. § 227(b)(1)(A)); *see also* Budget Act § 301(a)(1)(B) (amending 47 U.S.C. § 227(b)(1)(B)).

Second, NCLC's claims that the federal government has other options to contact its citizens without using automated technology are irrelevant to the narrow issue of the definition of "person," and furthermore are wholly unsupported and unrealistic. NCLC's claims ignore and/or disregard the value and effectiveness of today's automated technology and its important role in implementing the policies and programs of the United States government.

II. The Budget Act Does Not Foreclose The FCC's Broadnet Declaratory Ruling, Nor Is the Budget Act In Conflict Or Inconsistent With The FCC's Ruling

NCLC claims that the FCC has overstepped its authority and impermissibly defined "persons" to exempt federal government contractors from the TCPA given the Amendment that allows debt collection calls by the federal government or by contractors acting on its behalf.⁵ NCLC argues that if federal government contractors were already exempt from the TCPA, the Amendments would not have been necessary.⁶ This argument is unsupported by the plain language of the Act, the fundamental principles of statutory construction, the Supreme Court's decision in *Campbell-Ewald Co. v. Gomez*, and NCLC's own comments.

Congress was well aware that the plain language of the definition of "person" in Section 153(39) of the Communications Act *excludes* the federal government,⁷ and yet Congress elected not to expressly set forth a different definition to *include* the federal government under TCPA's Section 227(b)⁸ as it has done in other provisions of the TCPA and the Communications Act.⁹

⁵ NCLC Petition, at 15-17.

⁶ *Id.* at 16.

⁷ See *Broadnet Declaratory Ruling*, ¶¶ 13-14 and nn. 63-64.

⁸ *Id.*, ¶12 (citing to the Supreme Court's explanation that "the word 'person' does not include the sovereign . . . [except] upon some affirmative showing of statutory intent to the contrary.") (footnote omitted). The Commission also emphasized that "[n]o commenter has made a showing of statutory intent to the contrary, and no such intent is articulated in the legislative history of the TCPA." *Id.*

Therefore, under longstanding Commission precedent and the federal common law of agency, no liability attaches to a party who is calling on behalf of a principal that would not be liable under the TCPA if the principal had placed the call itself. This means that federal government contractors acting on behalf of the federal government are not “persons” under Section 227(b)(1).¹⁰ Significantly, this ruling is also consistent with long-standing FCC precedent regarding how tax-exempt non-profit organizations are treated under the TCPA. The Commission concluded in 1995 that the statutory exemption from the term “telephone solicitation” for communications made by a tax-exempt nonprofit organization¹¹ should be extended to include communications made by *or* on behalf of the tax exempt organization by a third party.¹² It would be untenable and also discriminatory if the federal government and its contractors were treated differently than a tax-exempt non-profit organization and its call centers for non-telemarketing and non-telephone solicitations.¹³

NCLC’s reference to “one subsection of TCPA that prohibits any ‘person’ from falsifying certain information that appears on a caller ID” in support of its claim that Congress intended for persons to include federal government contractors is puzzling, if not misguided. NCLC cites to Section 227(e)(7) titled “Effect on Other Laws,” which states: “This subsection does not prohibit

⁹ *Broadnet Declaratory Ruling*, ¶¶ 13-14.

¹⁰ *Id.* at ¶¶ 16-17.

¹¹ See 47 U.S.C. § 227(a)(4)(C); see also 47 C.F.R. § 64.1200 (f)(14)(iii).

¹² See *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Memorandum Opinion and Order, 10 FCC Rcd 12391 ¶¶ 12-13 (1995).

¹³ See e.g., *Reed v. Town of Gilbert, Arizona*, 135 S. Ct. 2218 (2015) (striking down a State code that imposed more stringent restrictions on signage from a nonprofit group than on signs conveying other messages or from other speakers); see also *Sorrell v. IMS Health, Inc.*, 564 U.S. 552 (2011) (striking down Vermont’s prescription privacy law, because “[t]he State has burdened a form of protected expression that it found too persuasive. At the same time, the State has left unburdened those speakers whose messages are in accord with its own views. This the State cannot do.”)

any lawfully authorized investigative, protective, or intelligence activity of a law enforcement agency of the United States, a State, or a political subdivision of a State, or of an intelligence agency of the United States.”¹⁴ This subsection of Section 227 is supposed to support NCLC’s claim that if a contractor performing government activities was “not a ‘person’ subject to TCPA, there would be no need for this exception.”¹⁵ NCLC’s interpretation of this subsection is incorrect. First, the title of the subsection clearly indicates that its purpose was to address the effect of the caller ID prohibition on other *laws* – not other *entities*. By its plain language, Congress intended that this section ensure that certain law enforcement actions by designated federal *and* state government entities were not hampered by the prohibitions in this subsection of the TCPA. This subsection has no relevance, correlation or implication that impacts the definition of “person” under Section 227(b)(1) or the Commission’s determination whether a government contractor is subject to TCPA when using automated technology to send non-telemarketing communications. If anything, the structure of subsection 227(e) further supports the *Broadnet Declaratory Ruling*. The long standing presumption as applied by the Supreme Court is that the word “person” excludes the federal government “unless stated otherwise.”¹⁶ Congress therefore could have easily added a “Definitions” subsection that would apply to Section 227(b) as expressly done in subsection 227(e)(8)¹⁷, or a “Limitations” subsection as

¹⁴ 47 U.S.C. § 227(e)(7).

¹⁵ NCLC Petition, at 16.

¹⁶ *Broadnet Declaratory Ruling*, ¶14 (citations omitted).

¹⁷ 47 U.S.C. § 227(e)(8).

expressly done in subsection 227(e)(9)¹⁸ to expressly define “person” to include the federal government and its contractors.

NCLC’s argument that the *Broadnet Declaratory Ruling* is also inconsistent with the Supreme Court’s decision in *Campbell-Ewald Co.v. Gomez* is also unavailing.¹⁹ NCLC claims that the holding does not support the Commission’s decision that federal government contractors enjoy immunity from TCPA claims because the contractor at issue in this case did not receive immunity.²⁰ NCLC conflates the ultimate outcome of the case with the Supreme Court’s rationale in reaching that outcome. NCLC ignores this important statement in the decision: “[G]overnment contractors obtain certain immunity in connection with work which they do pursuant to their contractual undertakings with the United States.”²¹ While the Court was very clear that this immunity is not obsolete,²² it is just as unambiguous that immunity is only afforded to the contractor when the contractor has been duly authorized by the federal government and follows the instructions of the federal government.²³ The *Broadnet Declaratory Ruling* comports with this decision, exempting a contractor from TCPA liability only when the

¹⁸ 47 U.S.C. § 227(e)(9).

¹⁹ NCLC Petition, at 9 (citing to 136 S.Ct. 663 (2016)).

²⁰ *Id.* (“It was not reasonably foreseeable that a Supreme Court decision that allowed a case to proceed against a contractor for violating the TCPA would be used by the Commission as the basis for excluding contractors from the definition of ‘person[s]’ under the TCPA.”).

²¹ *Campbell-Ewald*, 136 S.Ct. 672 (emphasis added).

²² *Id.*

²³ *Id.* at 673-74 (explaining that *Campbell-Ewald* did not receive immunity because it failed to follow the explicit instructions of the U.S. Navy to send messages only to individuals who had opted-in); *see also Broadnet Declaratory Ruling*, ¶20.

contractor is authorized by the federal government *and* follows the instructions of the federal government.²⁴

Moreover, NCLC conveniently ignores the context and timeframe in which the Amendment was adopted. Congress was also well aware when it enacted the Budget Act in 2015 that the TCPA was outdated and that the Commission's rules may cause regulatory uncertainty given the advances in technology.²⁵ Additionally, Congress was aware that there have been class action lawsuits against automated communications that were not defined as telemarketing or telephone solicitations.²⁶ In fact, over the past decade, TCPA class action lawsuits have increased exponentially, from 14 litigants in 2007 to nearly 4,000 in 2015, with expected increases in lawsuits in 2016.²⁷

Therefore, given this concern about the outdated nature of the TCPA, pending FCC actions to issue clarification of its rules, and the exponential increase of class action lawsuits over the past few years, it is no surprise that Congress introduced legislation to clearly delineate its intent and avoid any dispute or issues that would interfere with, delay or hamper the primary

²⁴ *Broadnet Declaratory Ruling*, ¶ 20.

²⁵ *Is the FCC Responding to the Needs of Small Business and Rural America: Hearing Before the Committee on Small Business, U.S. House of Representatives*, 113th Cong. 32-33 (Sept. 17, 2014). Congress also acknowledged that there were "many TCPA-related petitions for declaratory ruling that are awaiting action by [the FCC]." *Id.* at 32.

²⁶ *See e.g.*, 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)(note that this letter is misdated Jan. 8, 2014) ("Congressional Letter")("Unfortunately, this law is now being applied inappropriately by those who claim that its provisions restrict research survey calls placed by or on behalf of the federal government. One nonprofit organization, RTI International, has already been sued by a litigant who claimed that the research survey calls it placed on behalf of federal agencies violated the TCPA. Similar suits may follow.").

²⁷ WebRecon LLC, *Out Like a Lion... Debt Collection Litigation & CFPB Complaint Statistics, Dec 2015 & Year in Review* (2015), available at: <http://webrecon.com/out-like-a-lion-debt-collection-litigation-cfpb-complaint-statistics-dec-2015-year-in-review/> (last visited Aug. 30, 2016).

deficit reduction objective of the Budget Act's TCPA amendment.²⁸ In today's highly litigious environment, it is prudent to have both regulatory and legislative action, in essence a 'belt and suspenders' approach, to minimize the potential for class action lawsuits to the extent possible.

III. Advanced Automated Technology Is The Most Effective And Efficient Way For The Federal Government To Reach Its Citizens For Important And Timely Communications, Particularly Low Income Citizens

NCLC argues that "the TCPA does not prevent government agencies from making 'regularly dialed calls' staffed by humans, and since those calls are infinitely more effective in reaching people than robocalls, these claims [that federal agencies are prevented from things such as collecting child support] are specious."²⁹ This argument that the government has options has already been addressed by the FCC, finding it is irrelevant to the narrow issue of whether the federal government is a "person" under the TCPA. The FCC expressly stated that "[i]f the federal government were prohibited from making autodialed or prerecorded-or artificial-voice calls to communicate with its citizens, it would impair – in some cases severely – the government's ability to communicate with the public and to collect data necessary to make

²⁸ In an effort to "step up collection of debts owed to the Federal Government," President Obama recommended in 2011 to amend the Communications Act that would "[a]llow agencies to contact delinquent debtors via their cellular phones. The Administration also proposes to amend the Communications Act of 1934 to facilitate collection of debts owed to or guaranteed by the Federal Government, by facilitating contact of delinquent debtors who are most readily reached on their cell phones. *This provision is expected to provide substantial increases in collections, particularly as an increasing share of households no longer have landlines and rely instead on cell phones.*" OMB, *Living Within Our Means and Investing in the Future, The President's Plan for Economic Growth and Deficit Reduction* (Sept. 2011), available at: <https://www.whitehouse.gov/sites/default/files/omb/budget/fy2012/assets/jointcommitteereport.pdf> (last visited Aug. 30, 2016), at 28 (emphasis added).

²⁹ NCLC Petition, at 11. NCLC does not define its term, "regularly dialed calls." It is unclear whether NCLC means that any such calls must be manually dialed by a human being, whether any such call must be a live voice call, or both. How ironic that many live voice calls use automated technology to actually dial the number, which would still be considered unlawful under the FCC's broad definition of ATDS because such technology would be classified as an ATDS. The recipient of the call would not know the difference. However, to require manual dialing of hundreds of thousands of citizens by the federal government or its contractors is simply unrealistic from a human and financial resources perspective and is in direct opposition to the stated goal of deficit reduction.

informed public policy decisions.”³⁰ We agree. Moreover, NCLC’s argument is unsupported, unrealistic, and conveniently ignores the documented value, effectiveness, and importance of non-telemarketing calls made using automated technology. Indeed, in many circumstances automated communications are the *only* way that citizens can be reached in anything resembling an acceptable timeframe or budget.

Automated technology, such as pre-recorded calls and text messages, are more effective in reaching consumers than email, voice calls, or postal mail.³¹ Gallup reports that “[t]exting, using a cellphone and sending and reading email messages are the most frequently used forms of nonpersonal communication for adult Americans.³² Additionally, such technology is cost effective, saving the federal government money in not having to hire additional personnel to make “regularly dialed calls” or engaging in more expensive types of personnel outsourcing and communications.³³

If non-telemarketing automated calls by the federal government and its duly authorized contractors were prohibited, a large part of the population would be disenfranchised and

³⁰ *Broadnet Declaratory Ruling*, ¶15.

³¹ Text messages have a 98% open rate, compared to a 22% open rate for email. MobileMarketingWatch.com, available at: <http://mobilemarketingwatch.com/sms-marketing-wallops-email-with-98-open-rate-and-only-1-spam-43866/> (last visited Aug. 30, 2016). Text messaging also has a 45% response rate, compared to a 6% response rate for email. Onereach.com, available at: <https://onereach.com/blog/45-texting-statistics-that-prove-businesses-need-to-start-taking-sms-seriously/> (last visited Aug. 30, 2016).

³² Frank Newport, *The New Era of Communication Among Americans*, Gallup (Nov. 10, 2014), available at: <http://www.gallup.com/poll/179288/new-era-communication-americans.aspx?version=print> (last visited Aug. 29, 2016).

³³ *See Broadnet Declaratory Ruling*, ¶19 (“The federal government and its agencies generally lack the capacity and expertise to conduct large scale telecommunications operations using their own facilities; federal agencies are not often experienced at operating call centers. Instead, to efficiently conduct these activities, the government usually must act through third-party contractors.”).

uninformed. There is increasing growth of wireless-only households,³⁴ many of them low income. Additionally, texting is a preferred communication channel for certain demographic groups. Texting by Millennials (18-29 year-olds), now outranks phone calls as the dominant form of communication.³⁵ Many young people see the traditional telephone call with live agents as “overly intrusive, even presumptuous.”³⁶ While text messages have their inherent limitations, there is no doubt that this form of communication is becoming more and more important to reach people in a timely manner.

There are also many benefits to using automated technology that produce measurable positive outcomes for consumers. There is ample evidence that persons who receive automated healthcare related messages have better relative health outcomes compared to persons who do not receive such messages. For example, a recent clinical trial found that patients receiving text messages pertaining to their health routines were more likely to prevent a second heart attack, become more active, and maintain a lower blood pressure than those patients not receiving text reminders.³⁷ Some federal agencies that have long wait times and customer service challenges,

³⁴ Mario Trujillo, *Cellphone-only homes becoming the norm, CDC finds*, The Hill Latino (Dec. 1, 2015), available at: <http://thehill.com/policy/technology/261657-cellphone-only-homes-become-the-norm-cdc-survey-finds> (last visited Aug. 31, 2016) (“Wireless-only households became dominant in late 2014, and they could make up the majority in either late 2015 or early 2016. Since 2012, wireless-only households have grown about 12 percent.”).

³⁵ Neil Howe, *Why Millennials Are Texting More and Talking Less*, Forbes Arts & Letters (July 15, 2015), available at: <http://www.forbes.com/sites/neilhowe/2015/07/15/why-millennials-are-texting-more-and-talking-less/#3f264ee55576> (last visited Aug. 29, 2016) (citing to a 2014 Gallup Poll). This article also reported on the cost savings in using new technology compared to old technology. “JP Morgan offered to eliminate voicemail for thousands of employees who don’t interact directly with clients. About 65% took the offer, resulting in over \$3 million in annual savings.” *Id.*

³⁶ *Id.* at 2.

³⁷ Lisa Ward, *How to Prevent a Heart Attack: Text Patients on Healthy Habits*, Wall St. Journal (June 30 2016), available at: <http://www.wsj.com/articles/how-to-prevent-a-heart-attack-text-patients-on-healthy-habits-1466992860> (last visited Aug. 29, 2016). “Experts hope that text messages can also help patients with other severe and chronic diseases, such as diabetes, chronic lung disease and even mental-health illnesses, when patients require continuing support and lifestyle modifications. Texting also may be helpful in countries where patients don’t have easy access to medical support.” *Id.* The same is true for rural communities in the United States.

such as the U.S. Citizenship and Immigration Services, are expanding their use of short messaging service technology to provide better service.³⁸ Federal, state, and municipal governments, as well as schools and universities across the country, use automated messaging to communicate important logistical, health, and safety messages to their constituents (e.g., weather alerts, office and school closings, and facility alerts). And the Marketing Research Association reports that “[m]any federal government agencies, seeking to avoid coverage bias, require the inclusion of cell phone-only and cell phone-mostly households in the research studies they conduct or commission.”³⁹

NCLC claims that the *Broadnet Declaratory Ruling* would cause irreparable harm to its low income and senior clients who will receive unlimited automated messages and increased costs to wireless service.⁴⁰ Not only is this claim unsupported, it presumes that all low income and senior citizens do not want to receive messages from the government, not even on phones provided for by federal government programs to ensure that all citizens are connected, informed, and part of society.⁴¹

NCLC’s claim also assumes that none of its low income or senior clients would benefit from the important information provided by the federal government. While we greatly admire NCLC’s commitment to protecting its clients from scams, marketing abuses, and violations of

³⁸ Rebeca Carroll, *When the Government Sends You a Text Message, Take Note*, NextGov Newsletter (Sept. 24, 2014), available at: <http://www.nextgov.com/mobile/2014/09/when-the-government-sends-text-message-take-note/95003/> (last visited Aug. 29, 2016).

³⁹ MRA, *By the Numbers: Calling cell phones – the FCC makes a bad regulation worse* (June 30, 2010), available at: <http://www.marketingresearch.org/article/numbers-calling-cell-phones-fcc-makes-bad-regulation-worse> (last visited Aug 30, 2016). “The FCC’s proposal will hurt research, research users and the public.” *Id.*

⁴⁰ NCLC Petition, at 6.

⁴¹ See FCC, *Lifeline Programs for Low-Income Consumers*, available at: <https://www.fcc.gov/general/lifeline-program-low-income-consumers> (last visited Aug. 31, 2016).

privacy, not even NCLC can know what each and every one of its clients' needs or wishes from its government. NCLC's claim is speculative at best. The federal government provides a wide range of communications to its citizenry covering a very broad range of important subject matter. Such communications include, but are not limited to, information about employment opportunities and unemployment payments, Social Security benefits, healthcare-related communications about available Medicare or Medicaid insurance and preventive care benefits. The reality is that for low-income, wireless-only households, FCC reversal of its *Broadnet Declaratory Ruling* would prevent the federal government from reaching those citizens in the most effective and efficient manner available, and providing information about employment, finance, and preventive health care to the people that need it the most.

Significantly, if the *Broadnet Declaratory Ruling* is reversed, the likely and rational outcome is that a government contractor will purge all mobile numbers from any government-authorized communication, in order to avoid the risk of class action litigation. Such elimination of wireless numbers from a contact list used to implement official business authorized by the federal government raises additional issues that will impact the accuracy of data used for policy decisions and the potential outcome of legislation and appropriations.⁴² While there may be increased message volume, there is no record support of harm therefore resulting from the actions of the federal government and its contractors. And any such speculative harms pale in comparison to the safety risks and loss of employment opportunities, Medicaid or Medicare

⁴² See Congressional Letter, *supra* note 25 (citing to concerns that lack of clarification of whether the government (and its contractors) is a person under TCPA would prompt additional litigation and “would reduce the likelihood of informed public policy decisions and make it harder for lawmakers to effectively allocate limited government resources”).

benefits, or a person's income.⁴³ Indeed, on balance NCLC's position is the antithesis of a consumer protection.

Neither the federal government nor its contractors have any incentive to over communicate or contact consumers "at any time of day or night."⁴⁴ As stated in the Broadnet Stay Opposition, "[t]he Commission's decision does not mean that those acting on behalf of the federal government have carte blanche to make autodialed and prerecorded calls to consumers without restraint, nor does any evidence exist that suggests they will."⁴⁵ Additionally, the *Broadnet Declaratory Ruling* only applies to Section 227(b)(1), which does not affect other requirements such as time-of-day, spoofing and technical/procedural standards in other parts of the Commission's rules.⁴⁶ All federal government agencies that use private contractors have the obligation to ensure that the privacy of consumers is protected and that any communications sent on behalf of the federal government comports with agency requirements and with other laws and regulations, as applicable, such as the TCPA, Health Information Portability and Accountability Act⁴⁷ and Fair Debt Collection Practices Act.⁴⁸

⁴³ Such communications by the federal government should "not be impeded by the misapplication of a federal statute enacted to address a completely different type of calling activity." Congressional Letter.

⁴⁴ NCLC Petition, at 11.

⁴⁵ Broadnet Stay Opposition, *supra* note 2, at 5.

⁴⁶ RTI Stay Opposition, *supra* note 2, at 7.

⁴⁷ *See* 42 U.S.C. §§ 1320 et seq.

⁴⁸ *See* 15 U.S.C. §§ 1692-1692p.

Any danger of abuse by the agency or its contractors can be addressed by the agency head, Congress, and/or the President via Executive Order.⁴⁹ There is more danger in effectively censoring or discriminating against the federal government and its duly authorized contractors simply based on technology used for their communications, or based on the content or purpose of the communications. Moreover, any consideration of a specific type of non-telemarketing content to be sent via automated technology is a violation of the First Amendment as prohibitive content-based or speaker-based speech.⁵⁰

IV. Conclusion

Eliza respectfully requests that the Commission reaffirm its *Broadnet Declaratory Ruling* that the federal government in the conduct of official government business and its contractors acting with the full authority and pursuant to the instructions of the federal government are exempt from the requirements under 47 U.S.C. § 227(b)(1).

Respectfully submitted,

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⁴⁹ For example, Executive Order 13563 issued by President Obama in 2011 provided guidance to all federal agencies on how to reduce regulatory burdens and barriers on small businesses. *See* 77 Fed. Reg. 3821 (Jan. 21, 2011); *see also* Regulatory Flexibility, Small Business and Job Creation, Memorandum for the Heads of Executive Departments and Agencies, 76 Fed. Reg. 3827, 3828 (Jan. 21, 2011) (“Presidential Memorandum”). The Presidential Memorandum was issued contemporaneously with Executive Order 13563. President Obama issued a subsequent Executive Order that expressly imposed the obligations of Executive Order 13563 on independent regulatory agencies. 76 Fed. Reg. 41587 (July 14, 2011).

⁵⁰ *See supra* note, 13.

August 31, 2016

CERTIFICATE OF SERVICE

I, Sharon A. Krantzman, hereby certify that on this 31st day of August, 2016, I caused a copy of the foregoing “Opposition of Eliza Corporation to NCLC’s Petition for Reconsideration of Broadnet Teleservices LLC Declaratory Ruling to be served on the parties listed below via first-class, postage prepaid mail.

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