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March 6, 2015

**VIA ELECTRONIC DELIVERY**

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

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

Dear Ms. Dortch:

On March 3, 2015, Mark W. Brennan and Wesley B. Platt of Hogan Lovells US LLP, counsel to RTI International (“RTI”), met by teleconference with Mark Stone and Aaron Garza from the Commission’s Consumer & Governmental Affairs Bureau to discuss RTI’s pending Petition for Expedited Declaratory Ruling (“Petition”).<sup>1</sup> In the Petition, RTI asks the Commission to confirm that the Telephone Consumer Protection Act (“TCPA”)<sup>2</sup> does not restrict research survey calls made by or on behalf of the federal government.<sup>3</sup>

As explained in the Petition, the plain language of the TCPA and the Commission’s TCPA rules demonstrates that the TCPA does not apply to calls made by or on behalf of the federal government.<sup>4</sup> Both restrict “persons” from certain calling activities, and the federal government is not a “person” as defined therein.<sup>5</sup> In addition, the TCPA’s legislative history confirms that Congress did not intend to restrict federal government research calls by, for instance, showing that Congress did not consider federal government calls to be a problem when it crafted the TCPA.<sup>6</sup> Further, restricting research calls by or on behalf of the federal government would unreasonably limit the ability of

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<sup>1</sup> See RTI International, Petition for Expedited Declaratory Ruling, CG Docket No. 02-278 (filed Sept. 29, 2014) (“Petition”).

<sup>2</sup> 47 U.S.C. § 227.

<sup>3</sup> See Petition at 1.

<sup>4</sup> See *id.* at 5-8.

<sup>5</sup> See *id.*

<sup>6</sup> See *id.* at 8.

government agencies to perform their statutorily mandated functions, such as collecting data on the level and patterns of substance abuse as required by the Public Health Service Act.<sup>7</sup>

During the meeting, the parties discussed the protocols that RTI employs when placing research survey calls on behalf of federal agencies. When necessary, it randomly selects telephone numbers in one of two ways. First, RTI may contract with a vendor to randomly select landline telephone numbers, wireless telephone numbers, or both based on detailed specifications. After pre-screening the landline telephone numbers to identify those that have been ported to wireless telephone numbers, RTI then fields the sample based on the landline/wireless status. Second, RTI may use address-based sampling (“ABS”), in which it randomly selects a sample of household addresses based on information from the U.S. Postal Service. RTI then submits the sample to a vendor to append one or more telephone numbers for each address for use in the survey.

As an example, for the National Intimate Partner and Sexual Violence Survey (“NISVS”) discussed in the Petition, RTI used a nationally representative telephone survey that collected information and experiences of certain types of violence among non-institutionalized English and Spanish speaking women and men aged 18 or older in the United States.<sup>8</sup> To maximize coverage of the target population, the survey used a process designed to randomly sample landline and wireless telephone numbers.<sup>9</sup> In addition, samples were further stratified by state, with a target of at least 592 interviews per state.<sup>10</sup>

Moreover, the NISVS protocols and calls were approved by both RTI’s institutional review board and the Office of Management and Budget (“OMB”), which reviewed detailed information about the proposed calls that was submitted by the Center for Disease Control and Prevention (“CDC”) as part of the Paperwork Reduction Act (“PRA”) process.<sup>11</sup> Among other protocols, the CDC explained that all of the interviews would use computer-assisted telephone interviewing (“CATI”) software to reduce respondent burden, reduce coding errors, and increase efficiency and data quality.<sup>12</sup> Importantly, OMB’s approval means that it considered the proposed calls and survey protocols and concluded that they would not unduly burden the public.<sup>13</sup>

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<sup>7</sup> See *id.* at 9-13; see also National Survey on Drug Use and Health, About the Survey, [https://nsduhweb.rti.org/respweb/project\\_description.html](https://nsduhweb.rti.org/respweb/project_description.html) (last visited Mar. 5, 2015).

<sup>8</sup> See Supporting Statement for OMB Information Collection Request, Part A, OMB # 0920-0822, at 4 (Apr. 16, 2013), available at [http://www.reginfo.gov/public/do/PRAViewDocument?ref\\_nbr=201305-0920-005](http://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=201305-0920-005) (“2013 Supporting Statement, Part A”).

<sup>9</sup> See Supporting Statement for OMB Information Collection Request, Part B, OMB # 0920-0822, at 2 (Apr. 16, 2013), available at [http://www.reginfo.gov/public/do/PRAViewDocument?ref\\_nbr=201305-0920-005](http://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=201305-0920-005).

<sup>10</sup> *Id.* at 3-4.

<sup>11</sup> See *Petition* at 4; see also Office of Management and Budget, Notice of Action (June 10, 2013), available at <http://www.reginfo.gov/public/do/DownloadNOA?requestID=250551>.

<sup>12</sup> See 2013 Supporting Statement, Part A at 10.

<sup>13</sup> See, e.g., U.S. Department of Health and Human Services, Frequently Asked Questions about PRA, <http://www.hhs.gov/ocio/policy/collection/infocollectfaq.html> (last visited Mar. 6, 2015) (“The purpose of the [PRA] remains to ensure that federal agencies do not overburden the public with federally sponsored data collections.”).

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,

*/s/ Mark W. Brennan*  
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cc: Mark Stone  
Aaron Garza