



Hogan Lovells US LLP
Columbia Square
555 Thirteenth Street, NW
Washington, DC 20004
T +1 202 637 5600
F +1 202 637 5910
www.hoganlovells.com

June 11, 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 June 9, 2015, Mark W. Brennan of Hogan Lovells US LLP, counsel to RTI International (“RTI”), met by teleconference with Nicholas Degani, Legal Advisor to Commissioner Pai, to discuss RTI’s pending Petition for Expedited Declaratory Ruling (“Petition”).¹ In the Petition, RTI asks the Commission to confirm that the Telephone Consumer Protection Act (“TCPA”)² does not restrict research survey calls made by or on behalf of the federal government.³

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 research survey calls made by or on behalf of the federal government.⁴ Both restrict “persons” from certain calling activities, and the federal government is not a “person” as defined therein.⁵ 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.⁶ Further, restricting research calls by or on behalf of the federal government would unreasonably limit the ability of 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.⁷

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

² 47 U.S.C. § 227.

³ See Petition at 1.

⁴ See *id.* at 5-8.

⁵ See *id.*

⁶ See *id.* at 8.

⁷ 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 (last visited June 11, 2015).

During the meeting, I also explained that confirming that the TCPA does not restrict research survey calls made by or on behalf of the federal government would be consistent with the Commission's prior decisions interpreting the TCPA. For example, in its *1995 TCPA Order*, the Commission concluded that the statutory exemption from the term "telephone solicitation" for calls and messages "by a tax-exempt nonprofit organization"⁸ should include calls and messages made by *or on behalf of* tax-exempt nonprofit organizations.⁹

In its *2003 TCPA Order*, the Commission reached a similar conclusion in the context of the statutory exemption from the term "telephone solicitation" for calls and messages "to any person with whom the caller has an established business relationship" ("EBR").¹⁰ The Commission recognized that organizations often hire third-party telemarketers and affirmed that those telemarketers may routinely rely on the seller's EBR to market the seller's services and products.¹¹ In the *2005 State Farm Declaratory Ruling*,¹² the FCC's Consumer & Government Affairs Bureau further recognized that the EBR exemption from the term "telephone solicitation," which was applicable to State Farm, also extended to State Farm's "independent contractor insurance agents."¹³ The decisions in the *2003 TCPA Order* and the *2005 State Farm Declaratory Ruling* thus confirm that third parties calling on behalf of others that Congress excluded from application of the TCPA are also excluded.

For the reasons above and those discussed in the Petition and RTI's other filings in this proceeding, the Commission should issue a declaratory ruling confirming that the TCPA does not restrict research survey calls made by or on behalf of the federal government.

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
Mark W. Brennan
Partner
Counsel to RTI International
mark.brennan@hoganlovells.com
D 1+ 202 637 6409

cc: Nicholas Degani

⁸ 47 U.S.C. § 227(a)(4).

⁹ See *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Memorandum Opinion and Order, 10 FCC Rcd 12391 ¶¶ 12-13 (1995) ("*1995 TCPA Order*").

¹⁰ *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Report and Order, 18 FCC Rcd 14014 ¶ 118 (2003) ("*2003 TCPA Order*").

¹¹ *Id.*

¹² See *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991; Request of State Farm Mutual Automobile Insurance Company for Clarification and Declaratory Ruling*, Declaratory Ruling, 20 FCC Rcd 13664 (2005) ("*2005 State Farm Declaratory Ruling*").

¹³ *Id.* ¶ 5.