

October 5, 2015

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Marlene Dortch  
Secretary  
Federal Communications Commission  
445 12th Street, SW  
Washington DC 20554

**Re: September 30, 2015 Ex Parte Meetings regarding Petition of RTI International, CG Docket No. 02-278**

Dear Ms. Dortch:

On September 30, 2015, representatives of RTI International (RTI), the Consortium of Social Science Associations (COSSA), the Council of Professional Associations on Federal Statistics (COPAFS) and NORC at the University of Chicago meet in separate meetings with Jennifer Thompson and Travis Litman of the Office of Commissioner Jessica Rosenworcel, with Channele Hardy of the Office of Commissioner Mignon Clyburn, and with Maria Kirby from the Office of FCC Chairman Thomas Wheeler to discuss RTI's pending Petition for Expedited Declaratory Ruling, which requests that the Commission confirm that the Telephone Consumer Protection Act (TCPA) does not restrict research survey calls made by or on behalf of the federal government.<sup>1</sup>

In addition to these FCC staffers, each of the following persons participated in these meetings: Chet Bowie, Executive Vice President of Research, NORC at the University of Chicago; Chris Buchholtz, Vice President & Assistant General Counsel, RTI International; Michele Farquhar, Hogan Lovells US LLP on behalf of RTI International; Craig Hill, Unit Vice President, Survey, Computing, and Statistical Sciences, RTI International; Katherine (Kitty) Smith, Executive Director of COPAFS; Missy Koppelman, Executive Vice President of the Business Ventures and Innovation, NORC at the University of Chicago; Wendy Naus, Executive Director of COSSA; Ilisa Halpern Paul, President, District Policy Group at Drinker Biddle and Reath LLP; and the undersigned, Laura Phillips, Partner at Drinker Biddle and Reath LLP.

In the meetings the parties encouraged the Commission to grant the RTI Petition and discussed the critical need for government entities to have continued access to timely,

<sup>1</sup> See RTI International, Petition for Expedited Declaratory Ruling, CG Docket No. 02-278, (filed September 29, 2014 (RTI Petition)). To the extent deemed necessary, the parties seek a waiver of ex parte rule section 1.1206(b)(2)(iii) as they were not able to coordinate review of this letter by the end of the day on Friday October 3, 2015 due to conflicting schedules of the various meeting participants.

reliable research data, including through the use of random sample telephone survey data involving calls to wireless telephone numbers. For example, Dr. Smith explained that COPAFS's members come from a range of professional associations, research organizations, and some marketing and research firms, all of whom are concerned with maintaining and improving federal statistics, including the quality and accessibility of survey and administrative data that ensure that objective, nonpartisan social science research supports informed decision-making by individuals, families, communities, and all levels of government. She noted a Brown University study that concluded there were substantial positive earnings effects on students during their lifetimes by being taught by highly effective teachers. This finding can be used to direct resources into the development of effective teacher training and support.

In order to access these types of critical insights for policymakers in Congress, the executive branch, and other levels of government, the research and analytical users of statistics need high quality, accurate, reliable, and objective data on which to base analyses that inform public policymaking and programmatic decisions. If data being collected is not accurate, objective, and nationally-representative, then it cannot be used to inform decision-making. Policymakers and the public must have confidence that the findings of research and analysis that inform decision making are conducted without any bias, without agendas and without any partialities, leanings, subjectivity, or inaccuracy. Importantly, in order to be accurate and generalizable, federal statistics **must** include survey results from populations who can only be reached by wireless phones.

Any limitations on a federal surveyor's abilities, or on the abilities of the contractors on which the federal government relies for some surveys' conduct to collect data will prevent interviewers from obtaining data from a nationally representative sample. This could significantly weaken the quality of social science research that Americans rely on as the basis for obtaining useful information and making critical policy decisions. Limitations on the ability to contact wireless phones in the course of federally funded or sponsored research (due to concerns about TCPA restrictions) would adversely affect the integrity of the results. Dr. Smith also noted that given flat budgeting for federal agencies, an increasing number of federal surveys are now performed by contractors. She asked that the Commission keep these issues in mind when it considers the pending RTI Petition.

Ms. Naus described COSSA's mission as a nonprofit advocacy organization working to promote sustainable federal funding for social and behavioral science research and promoting federal policies that align with that goal. COSSA represents the collective interests of all fields of social and behavioral science research. Statistical data help to provide answers to complex, human-centered questions and federally-funded research is a key driver in the production of essential information and data. Federally-funded statistical data collection, secured through telephone based surveys (including to wireless telephone numbers), often is the only valid, reliable, and objective source of nationally-

representative information available to inform Congressional, executive branch and federal agencies in their respective policymaking and programmatic efforts.

Ms. Naus indicated that it is not a partisan issue to insist that federally-funded research be conducted in a manner that assures impartiality and ensures accuracy, validity, reliability, and effectiveness. She expressed concern that the Commission's Declaratory Ruling and Order not be read in any manner that might be used to retard the collection of valid, reliable, representative data to perform research functions that provide essential information about American society for informed decision making. She also noted that federally-funded research depends upon research contractors' ability to fulfill their obligations to the government.

Mr. Bowie and Ms. Koppelman of NORC, one of the nation's oldest not-for-profit, academic research organizations, described how NORC conducts telephone and in-person surveys for federal, state, and local government agencies to contribute to evidence-based decision making. Ms. Koppelman focused on the National Immunization Survey (NIS), which is administered by the Centers for Disease Control and Prevention and conducted by NORC. This immunization survey relies on telephone surveys to produce reliable, valid data. As members of the public have increasingly migrated to using wireless phones as their only communications device, the ability to readily contact wireless phones in order to have statistically significant data has become critical. The NIS and similar surveys produce reliable and valid data that are the basis for public and private initiatives that promote and protect health. The nation's local and state health departments, public schools, as well as the CDC, NIH, military, hospitals, health systems, and other public and private entities, rely on national immunization data for resource allocation, planning, disaster preparedness, among other things. Without an ability to contact wireless telephone numbers and reach the people that must be reached to ensure survey samples meet rigorous accuracy standards, Ms. Koppelman stated that NORC and other entities performing research on behalf of the federal government will be hindered in their ability to produce studies without bias. Ms. Koppelman also noted that use of other technologies relying on software or crowdsourcing to capture and analyze data had proven to be flawed and unreliable. By confirming that the TCPA does not apply to the research completed by and on behalf of the government, the Commission can ensure that federally-funded research can be conducted in a manner that will ensure the results are accurate, valid, and reliable and meaningful to the American public and supportive of the functioning of government.

RTI's representatives Mr. Buchholtz and Mr. Hill encouraged the Commission to grant RTI's pending Petition for Expedited Declaratory Ruling and spoke about federally funded survey work that RTI performs. As explained in RTI's 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>2</sup> Both restrict “persons” from certain calling activities, and the federal government is not a “person” as defined therein.<sup>3</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>4</sup> 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.<sup>5</sup>

RTI’s representatives also discussed the National Intimate Partner and Sexual Violence Survey (NISVS), which relies on a nationally representative telephone survey that collects 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>6</sup> To maximize coverage of the target population, the survey uses a process designed to randomly sample landline and wireless telephone numbers.<sup>7</sup> In addition, samples are further stratified by state, with a target of at least 592 interviews per state.<sup>8</sup> As discussed in its Petition, RTI was sued for NISVS calls made pursuant to its contract with the federal government.

As another example of the important government survey research being conducted today, RTI discussed the National Survey on Drug Use and Health that it has conducted on behalf of the Department of Health and Human Services for more than 26 years. This study is the major source of data on substance abuse used by a variety of policy makers, including the White House Office of National Drug Control Policy, Department of Justice, Substance Abuse and Mental Health Services, the Department of Transportation, and others.<sup>9</sup>

The essential point made during the meetings was that the issue of research integrity goes beyond the interests of individual researchers and organizations and that

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<sup>2</sup> See RTI Petition at 5-8.

<sup>3</sup> See *id.*

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

<sup>5</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).

<sup>6</sup> See *Ex Parte* Letter from Mark W. Brennan, Counsel to RTI International, CG Docket No. 02-278, 2 (filed Mar. 6, 2015).

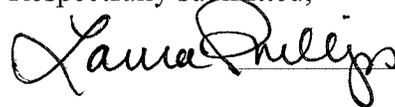
<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> RTI Petition at 9-10.

the Commission should act with dispatch to interpret the TCPA as proposed by RTI. The non-Commission attendees presented the very significant reasons that federally directed, federally funded research and survey work, whether performed by the government directly or on its behalf, must include calling members of the public who can only be reached on wireless phones (including, at times, through random sampling). Any restriction or condition on that ability would imperil both the accuracy and the generalizability of studies performed under the direction of all types of federal agencies. The meeting attendees reiterated the desirability of Commission action on the RTI Petition at the earliest time possible.

Respectfully submitted,

A handwritten signature in black ink that reads "Laura Phillips". The signature is written in a cursive style and is positioned above a horizontal line.

Laura H. Phillips

cc: Jennifer Thompson  
Travis Litman  
Chanelle Hardy  
Maria Kirby