

October 19, 2015

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

**Re: October 15, 2015 Ex Parte Meetings addressing the Petition of RTI International, CG Docket No. 02-278**

Dear Ms. Dortch:

On October 15, 2015, representatives of the Consortium of Social Science Associations (COSSA), the Council of Professional Associations on Federal Statistics (COPAFS) and NORC at the University of Chicago meet with staff in the Federal Communications Commission's Consumer and Government Affairs Bureau (CGB) 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> The meeting participants encouraged the Commission to grant the RTI Petition and discussed the critical need for government entities to have continued access to timely, reliable research data, including through the use of random sample telephone survey data involving calls to wireless telephone numbers.

The following CGB staff attended the meeting: John B. Adams, Deputy Chief of the Policy Division of CGB and Kristi Thornton, Attorney Advisor for the CGB Policy Division. Each of the following persons also participated in the meeting: Dr. Katherine (Kitty) Smith, Executive Director of COPAFS; Wendy Naus, Executive Director of COSSA; Chet Bowie, Executive Vice President of Research, NORC at the University of

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<sup>1</sup> See RTI International, Petition for Expedited Declaratory Ruling, CG Docket No, 02-278, (filed September 29, 2014 (RTI Petition)). As presented in RTI's Petition, the plain language of the TCPA and the Commission's TCPA rules demonstrate that the TCPA does not apply to calls made by or on behalf of the federal government. Both restrict "persons" from certain calling activities, and the federal government is not a "person" as defined therein. In addition, the TCPA's legislative history confirms that Congress did not intend to restrict government research calls by, for instance, showing that Congress did not consider federal government calls to be a problem when it crafted the TCPA. Further, federal common law principles of agency should apply to survey calls that are made on behalf of the federal government.

Chicago; 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.

Dr. Smith discussed the composition of COPAFS's membership as 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, accuracy and accessibility of survey and administrative data. Their goal is to 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 over the course of their lifetimes by being taught by highly effective teachers. This example illustrates the value of empirical research in making determinations about enhanced resource allocations towards the development of effective teacher support and training and the value of that commitment for youth.

Dr. Smith further explained that in order to access these types of critical insights for policymakers throughout the government, the researchers and analytical users of statistics collected by or on behalf of the federal government 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. Both the public and policymakers 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.<sup>2</sup> It is essential to attain the goal of accuracy and generalizability that federal statistics **must** include telephone survey results from populations who in many cases can only be reached by wireless phones.

Limitations on a federal surveyor's abilities, or on the abilities of the contractors on whom the federal government relies for some surveys' conduct to collect data will prevent interviewers from obtaining nationally representative samples of data. 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 limitations on the ability to make necessary calls) would

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<sup>2</sup> Dr. Smith noted that the Office of Management and Budget in late 2014 issued "Statistical Policy Directive No. 1: Fundamental Responsibilities of Federal Statistical Agencies and Recognized Statistical Units; Notice" found at <http://www.gpo.gov/fdsys/pkg/FR-2014-12-02/pdf/2014-28326.pdf>. Among other things, this Directive reiterates OMB's role as the coordinator of the federal statistical system as a result of its oversight of the Paperwork Reduction Act. OMB's responsibilities include ensuring the effectiveness, integrity and impartiality and confidentiality of information collected for statistical purposes.

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 subject to direction of the government and asked that the Commission keep all of 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. She noted that 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 surveys done by calling 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 agreed with the comments of Dr. Smith, reiterating that it is critical 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 July 10, 2015 TCPA Declaratory Ruling and Order not inadvertently be read in any manner that might be used to retard the collection of valid, reliable, representative data or 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' and even research grantees' ability to fulfill their obligations to the government.

Mr. Bowie 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. Paul focused specifically on the National Immunization Survey (NIS), which is administered by the Centers for Disease Control and Prevention (CDC) and conducted by NORC. This annual 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 on immunizations 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 thereby reach the people who must be reached to ensure survey samples meet rigorous accuracy standards, Mr. Bowie stated that NORC and other entities performing research on behalf of the federal government will be hindered in their ability to produce non-biased studies. Ms. Paul also noted that use of other technologies relying on software or crowdsourcing to capture and analyze data had proven to be flawed and unreliable.

The meeting participants also described the mandatory government protocols and oversight that exists in the performance of federal survey research by contractors. For example, in addition to the review and approval of call protocols, call scripts and other survey methods by individual federal agencies, the Office of Management and Budget (OMB), reviews detailed information about proposed research calls submitted by the agency collecting data as part of the Paperwork Reduction Act (PRA) process.<sup>3</sup>

Mr. Bowie noted that many government telephone surveys direct that specific population groups be “oversampled” in order that programmatic information yielded by surveys be useful and that this oversampling requires the ability to contact wireless phones. Two federal government examples of oversampling of specific populations include the National Social Life, Health and Aging Survey conducted for NIH by NORC that requires oversampling of Black and Hispanic populations, as well as the Medicare Current Beneficiary Survey conducted for the CDC by NORC that oversamples Hispanics, Disabled and the Elderly.

Other examples of oversampling directed by federal government surveys include the American Housing Survey, which oversamples in the 15 largest metropolitan areas in order to reach HUD-assisted housing units within the scope of the survey.<sup>4</sup> Another example of a deliberate oversampling methodology is the Department of Transportation (DoT) transit survey. DoT describes this survey as a:

national probability sample of households generated using list-assisted random digit dialing (RDD) methodology [to be] employed by the survey. Individual survey respondents within selected

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<sup>3</sup> See for example, an Office of Management and Budget, Notice of Action relating to the collection of data by the CDC (June 10, 2013), *available at* <http://www.reginfo.gov/public/do/DownloadNOA?requestID=250551>.

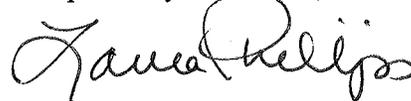
<sup>4</sup> This effort is described as: “HUD will draw new national and metropolitan area longitudinal samples for the AHS. The national longitudinal sample will consist of approximately 82,950 housing units, and will include oversample from the largest 15 metropolitan areas and approximately 5,250 HUD-assisted housing units.” See <https://www.federalregister.gov/articles/2015/02/05/2015-02258/30-day-notice-of-proposed-information-collection-2015-american-housing-survey#h-8>.

households will be chosen at random. The survey will include a total sample of 1,500 respondents, which is increased from a sample size of 1,000 used by previous data collections. The increase in sample size is due to the inclusion of questions regarding the safety of public transit. In order to ensure that there will be enough samples to produce reliable estimates for those questions, a total of 500 individuals will be oversampled from selected Metropolitan Statistical Areas that provide public transit services.<sup>5</sup>

A final point made was that Commission regulations that have the effect of restricting research calls by or on behalf of the federal government would unreasonably limit the ability of government agencies – either directly or through contractors - to perform their statutorily mandated functions. This is illustrated by the legal requirement that the government collect data on the level and patterns of substance abuse as required by the Public Health Service Act.<sup>6</sup>

The essential point made during the meeting was that the issue of research integrity goes beyond the interests of individual researchers and organizations and that the Commission should act with dispatch to interpret the TCPA as proposed in the RTI Petition. There are 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 on that ability would imperil both the accuracy and the generalizability of studies performed under the direction of all types of federal agencies and would be inconsistent with federal statutes and federal data collection requirements set by the OMB and by federal statistical agencies. The meeting attendees reiterated the desirability of Commission action on the RTI Petition at the earliest time possible.

Respectfully submitted,



Laura H. Phillips

cc: John B. Adams  
Kristi Thornton

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<sup>5</sup> See [https://www.treasurydirect.gov/lawguide/1-FR\\_5371-72-mortgage.pdf](https://www.treasurydirect.gov/lawguide/1-FR_5371-72-mortgage.pdf).

<sup>6</sup> See 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).