Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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

REPLY COMMENTS OF BROADNET TELESERVICES LLC

Broadnet Teleservices LLC ("Broadnet"), by its attorneys, hereby responds to comments on Broadnet's Petition for Declaratory Ruling ("Petition").[1] As described herein, the record makes clear that the Telephone Consumer Protection Act ("TCPA") and the Commission's TCPA rules do not apply to federal, state, and local governments. Accordingly, to ensure that wireless-only citizens – including many people of color, millennials, and individuals living in poverty[2] – will not be deprived of important opportunities to engage with their government, the Commission should declare that the TCPA and the TCPA rules do not apply to calls made by or on behalf of federal, state, and local governments when such calls are made for official purposes.

I. THE RECORD MAKES CLEAR THAT THE TCPA AND THE TCPA RULES DO NOT APPLY TO FEDERAL, STATE, AND LOCAL GOVERNMENTS

As the Petition describes, the plain language of the TCPA demonstrates that the statute does not apply to calls made by government entities.[3] Commenters agree. The American Public Power Association ("APPA") observes that the definition of "person" in the Communications

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[1] Petition for Declaratory Ruling of Broadnet Teleservices LLC, CG Docket No. 02-278 (filed Sept. 16, 2015).

[2] *See id.* at 3-4.

[3] *Id.* at 5-8.

Act, in which the TCPA is codified, "[o]n its face … excludes governmental entities"[4] and notes further that "courts have found that [the] term unambiguously excludes governmental entities…."[5] Likewise, the American Public Gas Association states that the Petition's assertion that Congress did not intend to include governmental entities under the Communication Act's definition of "person" "makes perfect sense…."[6] Indeed, as APPA observes, the "check on unwanted calls from governmental entities is that they must answer directly to their constituencies," rendering a recourse mechanism for such calls unnecessary.[7]

Only one commenter opposes the Petition, suggesting that the Commission "should not issue a sweeping order *exempting* all government related entities or contractors from the TCPA…."[8] The Petition does not ask for "a blanket exemption for [Broadnet's] line of business,"[9] however. Instead, by analyzing the language of the statute, the Petition demonstrates that the TCPA does not apply to calls made by governmental entities[10] – a fact that the commenter neglects to address.[11] Nevertheless, Commission grant of the Petition would not

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[4] Comments of the American Public Power Association, CG Docket No. 02-278, at 4 (filed Oct. 28, 2015) ("APPA Comments").

[5] *Id.* at 9.

[6] Comments of the American Public Gas Association, CG Docket No. 02-278, at 2 (filed Oct. 29, 2015).

[7] APPA Comments at 10.

[8] Comments of Frederick Luster, CG Docket No. 02-278, at 2 (filed Oct. 29, 2015) ("Luster Comments") (emphasis added).

[9] *Id.*

[10] *See generally* Petition at 5-8.

[11] Without challenging the plethora of cases cited in the Petition demonstrating that a government entity is not a "person," *see* Petition at 5-6 nn.14-18, the commenter cites in a footnote one unexplained case in which a court found that a state agency was a "person" within

"create loopholes," as the commenter suggests.[12] Instead, it would only address government-to-citizen communications and only when such calls are made for official purposes.[13]

Based on the clear language of the statute and the absence of any assertions in the record that the TCPA covers government entities, the Commission should confirm that it does not.

II. THE COMMISSION MUST CONFIRM THAT THOSE ACTING ON BEHALF OF GOVERNMENT ENTITIES ARE NOT SUBJECT TO THE TCPA

As the Petition makes clear, the Commission must clarify that the TCPA and the TCPA rules also do not apply to those acting on behalf of federal, state, and local government entities.[14] The sole commenter opposing the petition suggests that "contractors" have alternative means to communicate on behalf of government entities.[15] But Broadnet is not a "contractor" that independently makes calls without the active participation of a government entity or official. Rather, Broadnet is a service provider that works with the government entity or official to enable such entity or official to make calls to, and communicate directly with, the public. Nevertheless, as a practical matter, *any* uncertainty with respect to the TCPA's application to the service

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the meaning of the False Claims Act. Lester Comments at 1 n.2. The commenter, however, offers no explanation of why the term "person" in the TCPA could be read to include federal, state, and local government entities when such entities fail to meet the definition of "person" in the Communications Act.

[12] Luster at 2.

[13] *See* Petition at 1. Moreover, no commenter suggests that consumers wish to avoid government-to-citizen communications such as town hall calls. The sole opponent to the Petition seems to oppose the Petition because of concerns about robocalls to collect government-guaranteed or government-owed debts. *See, e.g.*, Luster Comments at 3 ("The Commission should be careful in creating a TCPA specific carve-out that could create a broad loophole for annoying and unwanted debt collection calls…."). However, at least with respect to calls made to collect a debt owed to or guaranteed by the United States, Congress has addressed, and thus rendered moot, this concern. *See* Bipartisan Budget Act of 2015, Pub. L. 114-74, § 301 (2015).

[14] Petition at 8-9.

[15] Luster Comments at 3.

provider that works with government entities and officials making telephone town hall calls to wireless numbers would effectively prohibit the making of such calls.[16]

Further, the commenter is mistaken regarding alternative means to conduct telephone town hall calls. As a practical matter, government entities and officials making telephone town hall calls cannot "use a live caller"[17] to call each of thousands of constituents; nor does it make any practical sense to do so with taxpayer dollars. Moreover, it is impractical, if not impossible, for government entities to secure the consent of thousands of constituents for the reasons cited in the Petition, which are not challenged in the record.[18] Thus, unless the Commission confirms that service providers working on behalf of government entities and officials are not subject to the TCPA, government entities will be unable to include constituents who rely on wireless telephone service in telephone town hall calls.

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[16] As the Petition explains, government agencies do not have specialists on staff and technology necessary to make telephone town hall calls without assistance. Petition at 8-9.

[17] Luster Comments at 3.

[18] Petition at 4 n.12.

III. CONCLUSION

For the reasons described in the Petition and herein, the Commission should declare that the TCPA and the Commission's TCPA rules do not apply to federal, state, and local governments, including legislative, judicial, and executive bodies and officers, and those who act on behalf of such government entities. Absent such action, citizens that rely on their wireless phones as their primary, or only, means of telephone communication will be deprived of important opportunities to engage with their government that wired citizens currently enjoy.

Respectfully submitted,

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