

March 11, 2016

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 Wednesday, March 9, 2016, Mark W. Brennan and Michele Farquhar of Hogan Lovells US LLP, counsel to RTI International (“RTI”), met with Gigi Sohn, Diane Cornell, Edward “Smitty” Smith, and Jamile Kadre from Chairman Wheeler’s office 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

During the meeting, we encouraged the Commission to grant the RTI petition expeditiously. 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 calls when it crafted the TCPA.⁶ Further, restricting research calls by or on behalf of the federal government would unreasonably limit the ability of federal government agencies to perform their statutorily mandated functions.⁷

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

² 47 U.S.C. § 227.

³ See RTI Petition at 1.

⁴ See *id.* at 5-8; *Campbell-Ewald Co. v. Gomez*, 136 S. Ct. 663 (2016).

⁵ See RTI Petition at 5-8.

⁶ See *id.* at 8.

⁷ See, e.g., *id.* at 9-12.

We also explained that RTI has a direct relationship with these government actors when it places research survey calls on their behalf. RTI typically establishes such relationships through a request for proposal (“RFP”) process and subsequent contractual agreement.

Federal government research surveys often require random number sampling. For example, the Center for Disease Control and Prevention’s (“CDC”) National Intimate Partner and Sexual Violence Survey (“NISVS”) 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.⁸ To maximize coverage of these populations, RTI uses randomly selected numbers—including wireless numbers—in a nationally representative telephone survey that the Office of Management and Budget (“OMB”) has approved.⁹ Other examples of RTI’s federal research surveys that require random number sampling include the Department of Health and Human Services’ National Survey on Drug Use and Health (“NSDUH”) and National Survey of Child and Adolescent Well-Being (“NSCAW”).¹⁰

These random number samplings frequently need to include wireless subscribers to yield usable and reliable data. As RTI and others have pointed out,¹¹ the percentage of “wireless-only” households grows each year and is significantly higher for demographics that can be critical to reach for federal government research purposes.¹² For example, more than 67% of all adults aged 25-34 live in wireless-only households, compared to 41% of adults aged 45-64 and 19% of adults aged 65 or older.¹³ Hispanic adults (59%) are more likely to be wireless-only compared to non-Hispanic white adults (43%).¹⁴ Adults living in poverty (59%) are more likely to be wireless-only compared to higher-income adults (46%).¹⁵ Adults living in rented homes (67%) are nearly twice as likely to be wireless-only compared to adults who live in homes owned by a household member (37%).¹⁶ And the prevalence of wireless-only households “varies substantially across states,” ranging from 21% in New Jersey to 54% in Arkansas.¹⁷

In addition, we explained that the Supreme Court’s decision in *Campbell-Ewald Co. v. Gomez* supports a grant of RTI’s Petition. As discussed in *Gomez*, “government contractors obtain certain immunity in connection with work which they do pursuant to their contractual undertakings

⁸ See Letter from Mark W. Brennan, Counsel to RTI, to Marlene H. Dortch, Secretary, FCC, CG Docket No. 02-278 (filed Mar. 6, 2015); RTI Petition at 9-13.

⁹ See *id.*

¹⁰ See RTI Petition at 9-10.

¹¹ See, e.g., *id.* at 10-11; RTI Reply Comments, CG Docket No. 02-278, at 7-8 (filed Jan. 12, 2015); Broadnet Teleservices LLC, Petition for Declaratory Ruling, at 3-5 (filed Sept. 16, 2015) (“Broadnet Petition”).

¹² See, e.g., CDC, *Wireless Substitution: Early Release Estimates From the National Health Interview Survey, January-June 2015*, at 2 (Dec. 2015), available at <http://1.usa.gov/1VMTiE>.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*; CDC, *National Health Interview Survey Early Release Program* (Dec. 2014), available at http://www.cdc.gov/nchs/data/nhis/earlyrelease/wireless_state_201412.pdf.

with the United States.”¹⁸ Specifically, a federal government contractor that performs as directed and does not violate the government’s “explicit instructions” would be protected against liability.¹⁹

A wide range of commenters support RTI’s petition, including several Members of Congress.²⁰ Representatives of the Consortium of Social Science Associations, the Council of Professional Associations on Federal Statistics and NORC at the University of Chicago have expressed their support for RTI’s petition in the record of this proceeding.²¹ Other parties also seek similar relief in their own TCPA petitions and have separately supported RTI’s request.²²

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,

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¹⁸ *Gomez*, 136 S. Ct. at 672 (quoting *Brady v. Roosevelt S. S. Co.*, 317 U.S. 575, 583 (1943)).

¹⁹ *Id.*

²⁰ See RTI, Reply Comments, CG Docket No. 02-278, at Attach. (filed Jan. 12, 2015); Letter from Robert E. Latta, Member of Congress, to Marlene H. Dortch, CG Docket No. 02-278 (filed July 8, 2015).

²¹ See, e.g., Letter from Laura Phillips, Counsel, to Marlene Dortch, Secretary, FCC, CG Docket No. 02-278 (filed Oct. 19, 2015).

²² See, e.g., Broadnet Petition; National Employment Network Association, Petition for Expedited Declaratory Ruling, CG Docket No. 02-278 (filed Aug. 19, 2014); Letter from Joshua M. Bercu, Counsel, Broadnet, to Marlene H. Dortch, Secretary, FCC, CG Docket No. 02-278 (filed July 30, 2015).