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April 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 April 7, 2016, Mark W. Brennan and Wesley B. Platt 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]

During the meeting, we discussed the Commission's legal authority to grant RTI's Petition. For example, we discussed how the plain language of the TCPA and the Commission's TCPA rules demonstrates that the TCPA does not apply to research survey calls by or on behalf of the federal government.[4] Both restrict only "persons" from certain calling activities,[5] and the federal government is not a "person" as defined in the Communications Act (in which the TCPA is codified).[6] Moreover, the Supreme Court has repeatedly held that "the term 'person' does not include the sovereign" and that "statutes employing the [term] are ordinarily construed to exclude it."[7]

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[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, e.g.*, Letter from Mark Brennan, Counsel, RTI, to Marlene H. Dortch, Secretary, FCC, CG Docket No. 02-278 (filed June 11, 2015); RTI Petition at 5-8.

[5] *See* 47 U.S.C. § 227(b)(1); 47 C.F.R. § 64.1200(a).

[6] *See* 47 U.S.C. § 153(39).

[7] *Will v. Michigan Dep't of State Police*, 491 U.S. 58, 64 (1989); *Wilson v. Omaha Tribe*, 442 U.S. 653, 667 (1979) (quoting *U.S. v. Cooper Corp.*, 312 U.S. 600, 604 (1941)); *see also, e.g., U.S. Postal Serv. v. Flamingo Indus. (USA) Ltd.*, 540 U.S. 736, 745 (2004); *U.S. v. Mine Workers*, 330 U.S. 258, 275 (1947).

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We also discussed how the Supreme Court's decision in *Campbell-Ewald Co. v. Gomez* supports the position that a federal government contractor that "performs as directed" is, like the federal government and its agencies, "not subject to the TCPA's prohibitions" with respect to its contracted activities.[8] As the Supreme Court explained, federal government contractors who act on behalf of the United States "obtain certain immunity in connection with work which they do pursuant to their contractual undertakings."[9] Consistent with the *Gomez* decision, such contractors should be protected against liability when they do not violate the federal government's "explicit instructions."[10]

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
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cc: Nicholas Degani

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[8] *See Campbell-Ewald Co. v. Gomez*, 136 S. Ct. 663, 666, 672 (2016).

[9] *Id*. at 672.

[10] *Id*. at 666, 672.